

ARTICLE I AUTHORITY, TITLE, PURPOSE, AND SCOPE

1.1 Authority.

Pursuant to the authority conferred by the Municipal Home Rule Law and the Town Law of the State of New York, the Town Board of the Town of Middleburgh, New York, hereafter referred to as the Town Board, hereby adopts and enacts as follows:

1.2 Title.

This Local Law shall be known and cited as the “Town of Middleburgh Zoning Law”.

1.3 Purposes in View.

This Law is designed to lessen congestion on public roads and streets; to minimize risk from fire, flood, panic and other dangers; to promote health and general welfare; to provide for adequate light and air; to prevent overcrowding of the land; to avoid undue concentration of population; to facilitate the orderly planning for future transportation, water supply, sewerage disposal, schools, parks and other requirements. This Law is made with the reasonable consideration of the character of various Districts, and their suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town and for the following specific purposes:

- A.** To guide the principal goal established in the Town and Village of Middleburgh’s Joint Comprehensive Plan adopted in 2015 to preserve and enhance the unique and rural features of Middleburgh that make it a quality place to live.
- B.** To preserve the Town’s natural and scenic beauty, and rural character.
- C.** To conserve the environmental quality of the Town of Middleburgh, including but not limited to, the ridgelines and steep slopes, stream corridors, wetlands and other surface water features, groundwater resources, wildlife habitats, and ecological systems.
- D.** To protect open spaces and active farmlands.
- E.** To promote and encourage appropriate business development in suitable locations.
- F.** To promote and encourage revitalization of the Route 30 and Route 145 Corridors in Middleburgh while encouraging a variety of business growth opportunities in appropriate locations.
- G.** To provide a range of housing types and foster affordable and moderately-priced housing.
- H.** To ensure new development addresses current and future needs for community facilities and services.
- I.** To protect residences from nuisances, odors, noise, pollution, and other unsightly, obtrusive and offensive land uses and activities, and to secure safety from fire, flood, or other dangers.

- J.** To encourage the conservation of energy and the appropriate use of renewable energy resources.
- K.** To provide a flexible system of land use regulation that enables the Town of Middleburgh to grow, while preserving its most important natural, historic, architectural, and cultural features.

1.4 Scope.

These regulations shall apply to the construction, installation or alteration of any building, structure or appurtenant system, any change in use, and any lot, plat, plot or parcel of land used, occupied or otherwise maintained as herein provided for in the Town of Middleburgh.

1.5 Applicability; Compliance Required.

No land use as listed below shall be commenced, carried out, or continued except in full compliance with this Law and after a Zoning Permit has been issued by the Code Enforcement Officer, or other applicable permit or approval has been issued by the appropriate Board, stating that the proposed building, structure, use of land or structure, or development activity complies with the provisions of this Law:

- A.** Erection, re-erection, demolition, or movement of a building or structure;
- B.** Change of the exterior structural dimensions of a building or structure;
- C.** Change in use of land, buildings or structures through the establishment of a new use, or through the expansion, enlargement or relocation of an existing use;
- D.** The resumption of any use which has been discontinued for a period of one (1) year or longer;
- E.** Construction of a new on-site sewage disposal system, or the replacement or major modification of any on-site sewage disposal system;
- F.** Establishment of or change in the dimensions of a parking area for nonresidential or multi-family residential uses;
- G.** Placement of a sign regulated in Article 7, Section 7.7 of this Law;
- H.** Conversion of a seasonal use to a year-round use, including residential.

1.6 Exemptions.

All new land uses activities within the Town shall require a Site Plan Review and approval before being undertaken, except the following:

- A.** Construction of one-or two-family dwelling and ordinary accessory structure, and related land use activities.

- B.** Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this Law.
- C.** Ordinary repair and maintenance or interior alterations that do not substantially change the use of the structure of an existing commercial or residential structure.
- D.** Exterior alterations or additions to an existing residential or commercial structure which does not substantially change its use, and which would not increase the square footage of the existing structure by more than twenty-five percent (25%) and having a cost value of less than ten thousand dollars (\$10,000).
- E.** Subject to applicable setbacks, minor accessory structures such as posts, sidewalks, driveways, flagpoles, playground equipment, etc. and small utility sheds of one hundred twenty (120) square feet or less and ten (10) ft. high or less located in the rear or side yard (maximum of two (2));
- F.** Nonstructural agricultural and gardening uses not involving substantial timber cutting.
- G.** The sale of agricultural produce and temporary structures, less than five hundred (500) square feet, related to the sale of agricultural products.
- H.** Exempt Signs listed in Article 7, Section 7.7 (E) of this Law;
- I.** Fences or walls complying with Article 7, Section 7.6 of this Law;
- J.** Forestry Uses, provided that such uses do not involve clear-cutting, except in documented cases of diseases;
- K.** The construction, alteration and maintenance of agricultural fences, a structure solely for agricultural or farm related purposes, roads, drainage systems, and farm ponds;
- L.** Accessory agricultural structures, such as barns and silos are exempt from the building height restrictions and number of accessory structure limitations.
- M.** Outdoor Wood Boilers;
- N.** On a yearly basis, a maximum of two (2) garage, lawn, porch sales, a maximum of three (3) days in duration per event; and
- O.** Any activity for which a permit has been obtained pursuant to a prior zoning law, or which did not require a permit under the prior zoning law and for which substantial on-site work had been completed prior to the effective date of this Law.
- P.** POD's.
- Q.** Private Stables.

1.7 Interpretation, Conflict with Other Laws.

In their interpretation and application, the provisions, of this Law shall be held to the minimum requirements adopted for the promotion of public health, safety, and general welfare. Whenever

the requirements of this Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, zoning laws, or local laws, the more restrictive provisions, or those imposing the higher standards shall govern.

1.8 Repeal and Replacement of Prior Zoning Law.

By this Local Law, the Town Board of the Town of Middleburgh hereby repeals the Town's prior Zoning Law and replaces it with this Zoning Law. This replacement shall take place the moment this Zoning Law becomes effective.

1.9 Separate Validity.

If any part or provision of this Law is adjudged invalid or unconstitutional by any court of competent jurisdiction, such judgement shall be confined in its effect to the part, provision, or application directly involved and shall not affect or impair the validity of the remainder of this Law.

1.10 Effective Date.

This Law together with the appurtenant Town of Middleburgh Official Zoning Map shall take effect immediately, upon filing with the Secretary of State.

1.11 Periodic Review.

The Town Board shall review this Local Law periodically. Periods between such reviews shall not exceed seven (7) years. The Town Board shall consult with the Planning Board, Zoning Board of Appeals, and Code Enforcement Officer in conducting this review.

ARTICLE II

PERMITS; APPROVAL PROCESS; AND OTHER GENERAL STANDARDS

2.1 Permits and Approvals.

No development may be commenced within the Town of Middleburgh prior to the issuance of all relevant permits or approvals. The types of permits and approvals include the following:

- A. BUILDING PERMITS and CERTIFICATE OF OCCUPANCY:** The issuing, posting, and expiration of Building Permits and the issuance of Certificates of Occupancy will be done according to Article XIII.
- B. SITE PLAN APPROVALS:** Site Plan Review applications shall be subject to the Site Plan Review provisions of Article IX.
- C. SPECIAL USE PERMITS:** All Special Use Permits applications shall be subject to the Special Use Permit provisions of Article X and shall be subject to the Site Plan Review provisions of Article IX.
- D. SUBDIVISION, MAJOR OR MINOR:** All Subdivision of land shall be subject to the provisions of Article XVI.
- E. VARIANCES:** All Area and Use Variances shall be subject to the provisions of Article XII.

2.2 Fees and Expenses.

- A.** Fees required by this Law shall be paid upon the submission of applications and appeals.
- B.** Fees related to this Law shall be set forth in a Fee Schedule adopted by the Town Board. The Town Board shall, each year, at its organizational meeting, readopt its Fee Schedule for the new Town fiscal year. The Town Board shall also have the power to amend the Fee Schedule from time to time, at its discretion.
- C.** No required fee shall be substituted for any other fee.
- D.** The following actions may require fees or reimbursement of expenses: Building Permit; Site Plan Review; Special Use Permit; Zoning Permit; Subdivision Application; Zoning Variance Application; Zoning Interpretation; Expense of Neighbor Notification; Expense of Notice Publication; Expense of Outside Professional Service.

2.3 Professional Assistance.

The Town Board, Planning Board or Zoning Board of Appeals may, at their discretion, engage the services of planning, engineering, legal, environmental, or other professional consultants, at the expense of the applicant for review of applications involving significant issues beyond the scope or complexity of normal review. The Town Board, Planning Board, or Zoning Board of Appeals may require costs to be paid in advance into an escrow account to be held by and managed by the Town and may deny an application upon failure of the applicant to make such payment in a timely manner. The Town Attorney shall establish the terms of the account in consultation with the Town Board, Planning Board, and/or Zoning Board of Appeals and shall

provide a monthly accounting of the escrow account to the applicant and provisions for further funding of the escrow account when the balance is drawn down to a specified amount.

2.4 Performance Bond.

To ensure the completion of required improvements such as, but not limited to, roads, landscaping, or other improvements required by the Planning Board as part of Article IX, Site Plan Review, or Article XVI, Subdivision of Land, or as required as in Sections throughout this Law; the Planning Board, may require, as a condition of approval, a Performance Bond or other security in such form and source acceptable to the Town Board in an amount sufficient to cover the estimated cost of completion of the improvements. Such bond or other acceptable form of security shall comply with the requirements of Section 277 of New York State Town Law. A period of one (1) year (or such other period as the Permitting Board may determine appropriate, not to exceed three (3) years) shall be set forth in the bond within which required improvements must be completed. The deposit specified above does not include all approvals or fees required from or by agencies other than the Town, costs associated with extensions to districts to provide necessary services to the proposal nor fees charged by Town departments or boards for permits, approvals, hearings, or other actions, except as noted above.

2.5 SEQRA.

The Town shall comply with all provisions of the New York State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York State Codes, Rules, and Regulations. Upon receipt of any complete application, the Town or any officer, department, or board of the Town shall initiate the New York State Quality Environmental Review process by issuing a determination of significance.

2.6 On-Site Sewage Disposal and Water Supply.

No person shall construct any new building or structure without first meeting the applicable requirements for sewage disposal and water supply. No Building Permit shall be issued until on-site sewage disposal and water supply plans are approved by the appropriate agency.

2.7 Performance Standards for Noisome and Injurious Substances, Conditions.

The following Performance Standards shall apply to all Districts, except with respect to normal farm uses which include, but are not limited to, forestry use tools, crop harvesting, feed lot operation, etc.

- A. *Odor, smoke, dust, and other atmospheric pollutants.*** The emission of odor, smoke and other particle matter shall not be permitted in violation of any applicable federal, state, county or town law or regulation, including, but not limited to, Article 6, part 201, of the New York State Code of Rules and Regulations. For the purpose of grading the density of smoke the Ringlemann Smoke Chart or US Environmental Protection Agency (EPA) Method 9 or 22 shall be used to determine the total smoke emitted. The emission of one (1) smoke unit per hour or more and smoke with discernable density of No. 2 or higher on the Ringlemann Smoke Chart shall be prohibited. The production of odors of concentration of noxious or explosive gases shall be prohibited.
- B. *Heat.*** No heat shall be produced that is perceptible beyond the boundaries of the lot from which the heat is emanating.

- C. *Industrial Wastes.*** All State and Federal laws, rules, regulations applicable to the discharge of solid and liquid wastes shall be met. No solid or liquid wastes shall be discharged into any public sewer, private sewage disposal system, stream, or on or into the ground, except in strict accordance with the standards approved by the New York State Department of Health or other duly-empowered agency.
- D. *Fire and Explosive Hazards.*** All State and Federal requirements applicable to fire and explosion hazards shall be met. The Planning Board may request an advisory opinion from the local fire department as to the department's capacity to address any potential fire and explosion hazards which may be generated by the application.
- E. *Vibration and Noise.*** No vibration shall be permitted which is capable of being felt by any person lawfully at any adjoining lot line. Noise levels shall not exceed fifty-five (55) dBA.
- F. *Light Pollution and Glare.*** No use shall produce glare to cause illumination beyond the boundaries of the property in which it is located. All exterior lighting, including security lighting, signs, or other uses shall be directed away from adjoining streets and properties. No direct glare shall be permitted, and all lighting fixtures shall be shielded so that the angle of illumination is directed downwards rather than out.

2.8 Damaged Buildings and Demolition of Buildings.

Any building which is damaged by fire or other accidental cause or by flood, wind, lightning, or other natural cause to the extent that it is no longer used for its regular or former purpose shall be repaired, rebuilt or razed within one hundred twenty (120) days after the damage is sustained. At the request of the Code Enforcement Officer, the Zoning Board of Appeals may grant an extension for a period not to exceed one (1) year after the expiration of the one hundred twenty (120) day per period. Such extension will only be granted if the owner of the property can demonstrate that progress has been made and enough reason exist for not complying with the original one hundred twenty (120) daytime period.

- A.** If an applicant is proposing a new use that requires demolition of an existing building, the demolition of that building shall be reviewed as part of a complete application of Site Plan Review. There shall be coordinated and concurrent review of this action with demolition and re-building.
- B.** When demolition is proposed without a proposal for redevelopment, the Planning Board shall conduct a review of the demolition and landscape plans. The parcel shall be seeded with grass and landscaped with trees and/or any other landscape feature acceptable to the Planning Board. Trees are preferred and the caliper size, location, and number of trees to be planted shall be determined by the Planning Board. If a sidewalk is present prior to demolition, such sidewalk shall be maintained or restored after demolition so that the sidewalk is safe for pedestrians and free of rubble and cracks. The Planning Board may require additional landscaping to maintain a pedestrian atmosphere at the site.
- C.** When demolition occurs, water, sewer, and all other utility lines shall be located, marked, capped, and inspected and approved by the appropriate department prior to final site treatment.
- D.** If a building permit is for or includes demolition of an existing structure, demolition, including site restoration, shall be completed within ninety (90) days. If demolition occurs during the months of November through March, seeding and landscaping shall take place by May 31.

2.9 Unsafe Building and Structures.

A. Unsafe Buildings and Structures pose a threat to life and property in the Town of Middleburgh

Buildings and structures may become unsafe by reason of damage by flood, fire, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows also serve as an attractive nuisance for young children who may be injured therein, as well as a point of congregation by vagrants and transients. A dilapidated building may also serve as a place of rodent infestation, thereby creating a health menace to the community. Debris, rubble or parts of buildings left on the ground and not removed constitute a dangerous, unhealthy and unsightly condition. The purpose of this Section is to provide for the safety, health, protection and general welfare of persons and property in the Town of Middleburgh by requiring such Unsafe Buildings and Structures to be repaired or demolished and removed.

B. Unlawful Acts.

It shall be unlawful for any owner, tenant or occupant of any building or portion of any building or structure in the Town of Middleburgh to maintain such building or structure or portion of any building or structure in any condition or manner which shall be Unsafe as defined in this Zoning Law.

C. Inspection and Reports.

When, in the opinion of the Code Enforcement Officer, any building or structure located in the Town of Middleburgh shall be deemed to be an Unsafe Building or Structure to the public as defined in this Zoning Law, the Code Enforcement Officer shall make a formal inspection thereof and report in writing to the Town Board his/her findings and recommendations in regard to the building's removal or repair.

D. Order to Repair or Remove; Hearing Required.

The Town Board shall thereupon consider said report, and, if it finds that said building is dangerous and unsafe to the public, it shall, by resolution, order its repair if the same can be safely repaired and, if not, its removal or demolition and shall further order that a hearing be held before the Town Board at a time and place therein specified and on at least five (5) days' notice to the owner of the Building and the owner, tenant or occupant of the land upon which same is situated or persons having an interest therein to determine whether said order to repair or remove shall be affirmed or modified or vacated and, in the event of modification or modification or affirmance, to assess all costs and expenses incurred by the Town in the repair or removal of such Building or Structure against the land on which said Building or Structure is located.

E. Notice Requirements.

1. The notice shall contain the following:
 - a) The name of the owner or person in possession as appears from the tax and deed records.
 - b) A brief description of the premises and its location.

- c) A description of the Building or Structure which is unsafe or dangerous and a statement of the particulars in which it is unsafe or dangerous.
- d) An order requiring the same to be made safe and secure or to be removed.
- e) That the securing or removal of said Building or Structure shall commence within a specified number of days of the service of the notice and shall be completed within a specified number of days thereafter.
- f) The time and place of the hearing to be held before the Town Board, at which hearing the owner or occupant shall have the right to contest the order and findings of the Town Board.
- g) That, in the event that such owner, occupant or other person having an interest in said premises shall fail to contest such order and fail to comply with the same, the Town Board will order the repair or removal of such Building or Structure by the Town and that the Town will assess all costs and expenses incurred in such repair or removal against the land on which the Building or Structure is located.
- h) That, in any case where a Building or Structure which was required to be made safe and secure under this Section is made safe by the boarding up thereof, the material used for such boarding up shall be painted and, as near as practicable, the same color as the Building or Structure.

F. Service of Notice, filing:

- 1. A copy of said notice shall be personally served upon the owner or one of the owners, executors, legal representatives, agents, lessees, or other persons having a vested interest in the premises as shown on the Town tax records or in the records in the Schoharie County Clerk's office.
- 2. If no such person can be reasonably found for personal service, then a copy of said notice shall be mailed to such person by registered mail, addressed to his or her last known address as shown on said records, and a copy of said notice shall be personally served upon any adult person residing in or occupying said premises, if such person can be reasonably found, and by securely affixing a copy of such notice upon the said Building or Structure.
- 3. A copy of said notice shall be filed in the Schoharie County Clerk's office, which notice shall be filed in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules (CPLR) and shall have the same effect as a notice of pendency as therein provided. A notice so filed shall be effective for a period of one (1) year from the date of the filing. It may be vacated upon an order of a Judge or Justice of a court of record or upon the written consent of the attorney representing the Town of Middleburgh. The Schoharie County Clerk shall mark such notice and any record or docket thereof as "cancelled of record" upon the presentation and filing of such consent or of a certified copy of such order.

G. Public Hearing.

The Town Board shall conduct the public hearing at the time and place specified in the notice to repair or demolish. It may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of the hearing, the Town Board shall determine by resolution to revoke the order to repair or remove, modify said order, or continue and affirm said order and direct the owner or other persons to complete the work within the time specified in the order or such other time as shall be determined by the Town Board.

H. Failure to Comply.

In the event of the refusal, failure or neglect of the owner or persons so notified to comply with said order of the Town Board within the time specified in said order, and after the public hearing, the Town Board shall by Resolution order that such Building or Structure be made safe and secure or removed and demolished by Town employees or by independent contractors. Except in emergency cases as herein provided, any contract for repair or demolishing or removal of the building in excess of five thousand dollars (\$5,000) shall be awarded through competitive bidding.

I. Recovery and Costs of Expenses.

All costs and expenses incurred by the Town in connection with the proceedings set forth in this Section, including the cost of actually making safe, securing or removing such Building or Structure of dangerous and unsafe condition, shall be assessed against the land on which said Building or Structure or said dangerous or unsafe condition is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and collection of a special ad valorem levy.

J. Emergency Cases.

Where it reasonably appears that there is present and clear and imminent danger to the life, safety or health of any person or property unless an Unsafe Building or Structure is immediately repaired and secured or demolished, the Town Board may, by Resolution, authorize the Code Enforcement Officer to immediately cause the repair or demolition of such Unsafe Building or Structure. The expenses of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in Section I hereof.

K. Application for Order by Supreme Court.

The Town Board, in its discretion, may elect to apply to the Supreme Court of the State of New York for an order directing that the building be repaired and secured or demolished and removed.

L. Special Proceeding for Costs.

The Town Board may commence a special proceeding pursuant to § 78-b of the General Municipal Law to collect the costs of demolition, including reasonable and necessary legal expenses.

2.10 Accessory Buildings and Uses.

- A.** On any lot accessory structure(s) or uses in connection with the principal building or use may be constructed and located subject to the following process:
 - 1. All accessory structures or uses shall require a Building Permit to be issued prior to their initiation and a Certificate of Compliance upon their completion as elsewhere required in this Law; except such minor ancillary uses as are specifically exempt. For the purposes of this section, a minor ancillary structure or use is less than 144 square feet generally not affecting the principal use of the premises in any significant manner.
 - 2. Where applicable, such Permit shall be issued conditional upon satisfactory completion and issuance of a Certificate of Compliance for the principal building or use to which it is accessory. If said Certificate of Compliance is not issued within one (1) year from the date of issuance of the Permit for

the accessory structure or use, the conditions upon which said Permit is issued shall be deemed not to have been complied with and the accessory structure or use shall be considered in violation of these Regulations, except as application may be made to and considered by the Board of Appeals, which Board may, for due cause shown, authorize a one (1) year extension to allow compliance with the conditions under which the Permit was issued.

B. Accessory Structure(s) or Use(s) shall be governed by the following:

1. No more than two (2) accessory structure or uses, in addition to any private garage, shall be permitted on any lot in conjunction with a Permitted Use, except for agricultural structures.
2. Accessory Structures and Uses in conjunction with a Special Use Permit, a Planned Development District, or any use required to be considered according to the Site Plan Review Process shall be determined appropriate as to number, type, and location by the Planning Board or Town Board as is appropriate in accord with their respective review functions in the above processes.
3. Accessory Structures to a residential use which are not attached to a principal building may be erected in accordance with the following requirements:
 - a) Front Yard Setback: Not located in any required front yard setbacks.
 - b) Rear or Side Yard Setbacks: At least ten (10) feet from side or rear lot line.
 - c) No closer than then ten (10) feet from a principal building or other accessory structure.
4. An Accessory Structure attached to a principal residential building or an accessory structure other than a residential use, whether attached to the principal building or not, shall comply in all respects with the requirements of the Law to the principal building.

2.11 Existing Undersized Lots

Any lot held in single and separate ownership prior to January 1, 2001 which area and/or width and/or depth are less than the specified minimum lot requirements for that district, may be considered as complying with such minimum lot requirements, and no variance shall be required, provided that:

- (a) Such lot has an area of at least 5,000 square feet and a minimum width of at least 50 feet at the required setback line.
- (b) The following minimum yard dimensions are maintained: each side yard, 8 feet; front yards, 20 feet; and rear yards, 15 feet.
- (c) All other requirements for that district are compliant.

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP

3.1 Zoning Districts.

The Town of Middleburgh is hereby divided into Zoning Districts as set forth below as shown on the Town of Middleburgh Official Zoning Map. The Town is divided into five (5) main Zoning Districts with the addition of five (5) Overlay Districts.

Overlay Districts. The purpose of Overlay Districts in this Zoning Law is to protect specific types of resources such as scenic viewsheds and ridgelines. Overlay Districts do not change the use and dimensional requirements of the underlying Zoning District unless specifically stated. They do impose specific requirements that must be followed. Two (2) visually sensitive Districts, Ridgeline and Scenic Viewshed, will require an additional visual assessment review in order to obtain approval. On any given parcel of land, more than one (1) Overlay District may apply, and the Planning Board shall have the discretion to determine how best to reconcile the requirements of different Overlay Districts. Unless there is sound reason to not do otherwise, the more restrictive requirements will apply.

In order to fulfill the purpose of this Law, the Town of Middleburgh establishes and is hereby divided in the following Zoning Districts:

- R-1 High Density Residential
- R-2 Medium Density Residential
- R-3 Low Density Agriculture/Residential
- C Commercial (C1 through C5)
- CLI Commercial Light Industrial

3.2 Special Overlay Districts:

- FPD Flood Protection District
- PDD Planned Development District
- SVD Scenic Viewshed Overlay District
- RPD Riparian Buffer Protection Overlay District
- RLD Ridgeline Overlay District

3.3 Establishment and Purpose of Zoning Districts.

A. High Density Residential (R-1).

The purpose of this District is to encourage a high density of residential development, with a mixture of housing types for our diverse population and to allow and promote high-density residential development, public uses, and home-based uses that will not have a material adverse effect on the rural character of the area. Further, the purpose is to promote development that protects historic resources, and is consistent in appearance with the scale, dimensions, and traditional character of the individual hamlets and fosters safe pedestrian and traffic circulation consistent with a small-town atmosphere.

B. Medium Density Residential (R-2).

The purpose of this District is to promote the rural character, including open space, historic and natural resources of the Town of Middleburgh, and to maintain existing medium density residential development and small farm uses at levels and lot layout patterns that will also protect the physical and biological resources of the Town of Middleburgh. In addition, this District will allow and promote medium-density residential development and home-based uses that will not have a material adverse effect on the rural character of the area.

C. Low Density Agriculture/Residential (R-3).

This District encompasses the largest area of the Town. The purpose of this District is to allow uses that are compatible with the predominant agricultural and residential uses. The purpose is to allow and promote low density residential development and home-based uses that will not have a material adverse effect on the rural character of the area. Preservation of open space areas and scenic vistas will be encouraged.

D. Commercial District (C1-C5).

The purpose of this District is designed to retain and provide areas for the sale at retail or wholesale of those types of goods and services required by residents of the community. Strip development with multiple curb cuts is discouraged. An attractive, pedestrian friendly, compact area of retail operations is encouraged. Parking and traffic flow shall be considered as part of the Site Plan Review process for any land development in this District. Residential uses that are compatible with a commercial district will be permitted. Land Uses in the Commercial (C) Zoning District will utilize appropriate design standards, the goal is to allow commercial development without compromising the rural nature of the Town.

E. Commercial Light Industrial District (CLI).

The purpose of this District is to foster employment opportunities and help diversify the tax base for the Town. The standards of this District are designed to retain and provide areas for light industry, manufacturing, research and development, warehousing, wholesaling, and limited retailing of products which by their inherent characteristics are not obnoxious to one another. The standards are further described to minimize adverse impacts to neighboring properties, visual, noise, odors, etc. and on the visual impacts of the site from roads.

A. As per the Town of Middleburgh Local Law 1 of 2017, the following shall remain in effect for Excavation and Mining Operations in the CLI Zoning District:

1. Tax Map Parcel #84.-6-13 shall be part of the R-3 Zoning District and always remain in a zoning district that prohibits excavation and mining exceeding 750 cubic yards per year.
2. Tax Map Parcels #95.4-4 and #96.5-2 shall be in the Commercial Light Industrial District, formerly known as Commercial District #7 (C7), as per Local Law 1 of 2017.
3. If an excavation and mining special use permit and/or mining expansion permit is applied for Tax Map #95.4-4- and # 96.5-2 (formerly the C-7 Zoning District), it is the desire of the Town of Middleburgh Town Board to have the New York State Department of Environmental Conservation Serve as Lead Agency for SEQRA and requires the following

conditions, in addition to all other requirements required through the permit/SEQRA process as part of any permit approval:

- a) “Forever Wild” buffer shall be used to protect neighboring property and to limit visual impacts of a mine to the greatest extent possible. The location and size of the buffers shall be determined through the permit review/SEQRA process, but buffer shall exist on all sides of the proposed excavation area, excluding access roads. Clearcutting of trees in these buffers will be prohibited, but selective logging in accordance with a forestry management plan will be allowed, established buffers shall be identified and protected by a permanent conservation easement.
- b) To establish baseline private water supply sources within a specified radius of the proposed excavation site shall be tested, with owner permission, for water quantity and quality prior to the commencement of mining and the results provided to the private water supply owner and the Town of Middleburgh Code Enforcement Officer. Distance for testing from the proposed excavation area shall be determined during the review of the required permits. The costs of such tests shall be borne by the mine owner.
- c) Adherence to Section 8.30, Excavation and Mining, of this Zoning Law shall be adhered to.

3.4 Establishments and Purpose of Overlay Districts.

A. Flood Protection District (FPD):

The Floodplain Protection District is established to manage areas in the Town as Federally Regulated Floodplains and Floodways. Additional review by the Town’s Floodplain Administrator and additional standards established by the Town’s Flood Damage Prevention Law are required for all uses and structures proposed within the Floodplain. The purpose is to protect the safety of the public and property from damage by flooding and to ensure that flood insurance is available to properties within such areas pursuant to the recommendations of the Federal Emergency Management Agency. All development and activities in the Floodplain shall comply with the Floodplain Regulations as set forth by the Town of Middleburgh Local Law # 1 of 2004 and Section 6.2 of this Law, and any subsequent amendments.

B. Planned Development District.

The Planned Development District (PDD) shall be treated as an amendment to this Zoning Law. The PDD is designed to accommodate such large-scale uses as will benefit the community, but which could not have been anticipated at the time of adoption of this Law. In no event shall ‘industrial or commercial use’ in a PDD be construed to mean, be, or include Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage. Where the Planned Development concept is deemed appropriate through the rezoning of land by the Town Board to a PDD, the set of conventional land use activities and specifications as set forth elsewhere in this ordinance are hereby replaced by a review and approval process in which an approved Development Plan becomes the basis for land use controls in said PDD.

For administrative procedure in approving a PDD see Section 6.5, of this Law for further District regulations.

C. Scenic Viewshed Overlay District.

The purpose of this Overlay District is to protect those areas of scenic importance. This District serves to provide additional protection to ensure the preservation of scenic qualities, which include landscaping and site design, the preservation of native vegetation, and the design of buildings and structures.

D. Riparian Buffer Protection Overlay District.

The purpose of this Overlay District is to protect the scenic character and water resource values of the surface water bodies in the Town.

E. Ridgeline Overlay District.

The purpose of this Overlay District is to protect the ridgelines and hillsides in order to preserve this scenic resource, help protect people and property from hazardous conditions particular to hillsides and require all practical innovative design solutions.

3.5 Official Town of Middleburgh Zoning Map.

The location and boundaries of the Zoning Districts established in Section 3.3 are shown on the Town of Middleburgh Official Zoning Map which together with everything shown thereof and all amendments thereto are hereby adopted by reference and declared to be appurtenant part of the Law (**Town of Middleburgh Official Zoning Map attached at end.**)

3.6 Interpretation of District Boundaries.

In general, the District boundary lines are intended to follow existing lot lines, Public Highway center lines, and the center lines of natural water course at mean water levels or are intended to be parallel to Public Highway center lines at such distances therefrom as are indicated in the Town of Middleburgh Official Zoning Map.

3.7 District Boundaries

R-1 High Density Residential: All of the following listed tax parcels in the hamlet of West Middleburgh along portions of Mill Valley Road and Hill Road:
106-4-15.1, 106-4-19, 106-5-12, 106-4-10, 106-4-9, 106-4-6, 106-4-14, 106-4-1.1, 106-4-17, 106-4-5, 106-5-13, 106-5-14, 106-5-15, 106-5-16, 106-5-17, 106-5-18, 106-5-19, 106-5-20, 106-5-21, 106-5-22, 106-5-23, 106-5-24, 106-5-11, 106-3-13, 106-3-4.2, 106-5-25, 106-5-10, 106-5-9, 106-5-8, 106-5-7, 106-5-6, 106-5-5, 106-5-4, 106-5-3

R-2 Medium Density Residential: Beginning at the intersection of the westerly bounds of tax parcel 107-5-6 (extended northerly) with the centerline of Posson Hill Road, thence easterly and southerly along said centerline and the centerline of Brooky Hollow Road to its intersection with the northerly bounds (extended westerly) of tax parcel 118-3-22, thence along said bounds to the northeasterly corner thereof, being also on the northerly bounds of tax parcel 118-3-4, thence easterly, southerly, and westerly along the bounds of said parcel (extended) to the centerline of Huntersland Road, thence southeasterly along said centerline to its intersection with the northerly bounds (extended) of tax parcel 119-4-10, thence easterly and southerly along the bounds of said parcel to the northwesterly corner of tax parcel 119-4-9, thence easterly along the

bounds of tax parcels 119-4-9 and 119-4-8 to the northeasterly corner thereof, thence in a straight line across a portion of tax parcel 119-4-7 to the northwesterly corner of tax parcel 119-7-13, thence easterly along the bounds of tax parcels 119-7-13 and 119-7-12 to the bounds of tax parcel 119-5-11, thence northerly, easterly, and southerly along said bounds to a tributary of Little Schoharie Creek, thence northeasterly along said tributary to its intersection with the bounds of tax parcel 119-2-11.1, thence northerly and easterly along said bounds (extended) to the centerline of Canady Hill Road, thence northerly along said centerline to the northerly bounds (extended) of tax parcel 119-2-12, thence easterly and southerly along the bounds of tax parcels 119-2-12, 119-2-13, 119-2-14, 119-2-15 and 131-5-15.1 to Huntersland Road, thence southerly across Huntersland Road to the easterly bounds of tax parcel 131-5-12, thence southerly along said bounds and continuing along the bounds of tax parcel 131-5-16 to Little Schoharie Creek, thence westerly along said Creek to the northeasterly corner of tax parcel 131-5-22, thence southerly and westerly along the bounds of said parcel (extended) to the centerline of Campbell Hill Road, thence southerly along said centerline to the southerly bounds (extended) of tax parcel 131-4-8, thence westerly along said bounds to Little Schoharie Creek, thence northwesterly along Little Schoharie Creek to its intersection with the tributary of same emanating from Brooky Hollow, thence northerly along said tributary to the southerly bounds of tax parcel 107-5-9, thence northwesterly, easterly, and northerly along the bounds of tax parcels 107-5-9 and 107-5-6 (extended) to the point of beginning.

Commercial District #1: Beginning at the centerline of NYS Route 30 where it intersects the 100 year flood plain boundary between Christmas Tree Lane and Bouck Road, thence easterly along said flood plain boundary as it winds and turns to a point 400 feet perpendicular to said centerline, thence northerly parallel with said centerline to the southerly bounds of tax parcel 95-4-4, thence easterly and northerly along said bounds to an angle point in same coincident with the northwesterly corner of tax parcel 96-2-9, thence northerly in a straight line across a portion of tax parcel 95-4-4 to the southeasterly corner of tax parcel 96-1-3, thence northerly and westerly along the bounds of tax parcels 96-1-3, 96-1-2, 84-6-1 and 84-6-16 to the easterly bounds of tax parcel 84-16-11.11, thence northerly and westerly along the bounds of tax parcel 84-16-11.11 to the easterly bounds of tax parcel 84-6-10.11, thence northerly along said bounds to the town line, thence westerly along said town line and across NYS Route 30 to the westerly bounds of tax parcel 83-5-3, thence southwesterly along the westerly bounds of tax parcels 83-5-3 and 83-5-4, thence southwesterly in a straight line across a portion of tax parcel 83-5-5 to the westerly bounds of tax parcel 83-5-6, thence southwesterly along the westerly bounds of tax parcels 83-5-6, 83-5-9, 83-5-7, and 83-5-11.2 (extended) to the centerline of Frisbieville Road, thence easterly along the centerline of Frisbieville Road to the easterly bounds (extended) of tax parcel 83-5-17.112, thence southwesterly, westerly, and northeasterly along the bounds of tax parcels 83-5-17.112, 83-5-17.117, 83-5-17.113, 83-5-17.111, and 83-5-17.2 (extended) to the centerline of Frisbieville Road, thence northwesterly along the centerline of Frisbieville Road to its intersection with Borst Mill Lane, thence westerly along the centerline of Borst Mill Lane to the 100 year floodplain boundary, thence southerly and easterly along said floodplain boundary as it winds and turns to the point of beginning.

Commercial District #2: Beginning at the center line NYS Route 145 where it intersects the southerly Middleburgh Village line, thence southwesterly along said line to the northwesterly corner of tax parcel 117-3-4, thence southerly and southwesterly along said bounds to a point 400 feet perpendicular to the centerline of NYS Route 145, thence southerly parallel with said centerline to the westerly bounds of tax parcel 117-3-16, thence southerly along said westerly bounds to the westerly bounds of NYS Route 145, thence southerly along said bounds to the northerly bounds of tax parcel 118-1-15, thence westerly along said bounds to a tributary of Little Schoharie Creek, thence southerly along said tributary to the southerly bounds of tax parcel 118-

4-3, thence easterly along said bounds (extended) to the centerline of NYS Route 145, thence southerly along said centerline to the southerly bounds (extended) of tax parcel 118-4-5.1, thence easterly along said bounds to a point 400 feet perpendicular to the centerline of NYS Route 145, thence northerly parallel with said centerline to the centerline of Gridley Road, thence westerly along said centerline to the westerly bounds of tax parcel 118-1-12, thence northerly along said bounds to the northerly bounds of tax parcel 118-1-16.1, thence westerly and northerly along said bounds to Little Schoharie Creek, thence through a portion of tax parcel 118-1-36.11 the following two courses - easterly along Little Schoharie Creek 730 feet, thence northerly in a straight line to the southeasterly corner of parcel 118-1-36.2, thence northerly along the easterly bounds of tax parcel 118-1-36.2 to the bounds of tax parcel 118-1-38.131, thence easterly, northwesterly, and northeasterly along said bounds (extended) to the centerline of Huntersland Road, thence westerly along said centerline to the northerly bounds (extended) of tax parcel 118-1-38.131, thence southwesterly and northwesterly along said bounds to the easterly bounds of tax parcel 118-1-24, thence northwesterly and northeasterly along said bounds (extended) to the centerline of Huntersland Road, thence northwesterly along said centerline Huntersland Road to the southerly Middleburgh Village line, thence westerly along said line as it winds and turns to the point of beginning.

Commercial District #3: Beginning at the centerline of NYS Route 30 where it intersects the southerly Middleburgh Town line thence northerly along said centerline to the northerly bounds (extended) of tax parcel 106-6-6, thence easterly along said bounds to the northeasterly parcel corner, thence southerly along the easterly bounds of tax parcels 106-6-6, 106-6-5, and 106-6-4, thence crossing VFW Lane southerly to the easterly bounds of tax parcel 106-6-10, thence southerly along said bounds to the southerly Middleburgh town line, thence westerly along the Middleburgh town line to the point of beginning.

This district (C-3) includes all of the following tax parcels:

106-6-4
106-6-5
106-6-6
106-6-9
106-6-10

Commercial District #4: Beginning at the centerline of NYS Route 30 where it intersects the northerly Middleburgh Village line, thence westerly along said village line to its northwest corner, thence northerly to a point on the northerly bounds of tax parcel 106-1-4, said point being 400 feet perpendicular to the centerline of NYS Route 30, thence northerly parallel with said centerline to the northerly bounds of tax parcel 106-1-8, thence easterly along said bounds to the westerly bounds of tax parcel 106-1-10.11, thence northerly and easterly along the bounds of said parcel to the westerly bounds of tax parcel 106-1-10.2, thence northerly along said bounds (extended) to the centerline of Mill Lane, thence easterly along said centerline to the centerline of NYS Route 30, thence northerly along the centerline of NYS Route 30 to the northerly bounds (extended) of tax parcel 95-7-19, thence easterly and southerly along the bounds of said parcel to the bounds of tax parcel 95-7-20, thence southerly and westerly along said bounds and continuing along the southerly bounds (extended) of tax parcel 95-7-21 to the centerline of NYS Route 30, thence southerly along said centerline to the centerline of Middle Fort Road, thence along said centerline to the northerly Middleburgh Village line, thence westerly along said line to the point of beginning.

Commercial District #5: Beginning at the point where the floodplain intersects the centerline of NYS Route 145 thence northerly along the floodplain boundary to the northerly bounds of tax parcel 95-6-2,

thence westerly along said bounds to a point 500 feet perpendicular to the centerline of NYS Route 145, thence northerly parallel with said centerline to the southerly bounds of tax parcel 96-6-10.2, thence easterly, northerly, and westerly along the bounds of said parcel to a point 500 feet perpendicular to the centerline of NYS Route 145, thence northerly parallel with said centerline until it intersects the centerline of Sunnyside Road, thence northerly along said centerline approximately 600 feet to the southerly edge of a tilled field, thence northwesterly across a portion of tax parcel 95-2-20 along said field edge (extended) to the centerline of NYS Route 145, thence northerly along said centerline to the westerly bounds (extended) of tax parcel 95-1-10, thence southerly along said bounds to the northerly bounds of tax parcel 95-1-12, thence southerly in a straight line across a portion of said parcel to an angle point in the northerly bounds of tax parcel 95-1-13.2, being the third angle point westerly of the southeasterly corner thereof, thence easterly along said northerly bounds to a point being the intersection of the northerly extension of the westerly bounds of tax parcel 95-1-13.1, thence southerly along said extension and across a portion of tax parcel 95-1-13.2 and continuing southerly along said westerly bounds of tax parcel 95-1-13.1 to Highgrove Lane, thence southerly across said Lane to the westerly bounds of tax parcel 95-5-10, thence southerly along said westerly bounds to the bounds of tax parcel 95-5-11, thence westerly and southerly along said bounds and continuing in a straight line southerly across a portion of tax parcel 94-2-2 to the bounds of tax parcel 95-6-24, thence westerly, southerly, and easterly along the bounds of said parcel and also along the bounds of tax parcel 96-6-25 to a point 500 feet perpendicular to the centerline of NYS Route 145, thence southerly parallel with said centerline to the southerly bounds of tax parcel 96-6-27.1, thence easterly along said southerly bounds (extended) to the centerline of NYS Route 145, thence southerly along said centerline to the point of beginning.

Commercial Light Industrial District: Beginning at the northwesterly corner of tax parcel 96-2-9, thence northerly in a straight line across a portion of tax parcel 95-4-4 to the southeasterly corner of tax parcel 96-1-3, thence northerly along the easterly bounds of said parcel to the westerly bounds of tax parcel 96-5-2, thence continuing northerly along said bounds to the bounds of tax parcel 96-5-1, thence easterly and northerly along said bounds to the northerly bounds of tax parcel 95-4-4, thence easterly, southwesterly, northerly, and westerly along the bounds of said parcel 95-4-4 to the point of beginning.

ARTICLE IV DISTRICT USE REGULATIONS

4.1 Any Use Not Specifically Articulated as Allowed is Prohibited.

Any use not specifically set forth Schedule 2, Use Schedule, as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any Zoning District shall be expressly prohibited in that District. A use specifically set forth (on said schedule) as a permitted use in one (1) District shall not be permitted in another District unless it specifically set forth (on the schedule) as a permitted use in said other District.

Except otherwise provided herein: (i) no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected moved, or altered unless in conformity with the regulations herein specified for the District in which it is located; and (ii) no building or structure shall hereafter be erected or altered to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the District in which such building or structure is located.

A. Prohibited Uses. In addition to the uses not listed on Schedule 2 that are prohibited, the following uses are expressly prohibited:

1. Billboards
2. Clear Cutting, as described in this Law
3. Motor Sports Facilities
4. Heavy Industries
5. Facilities for the disposal of hazardous or radioactive material or waste
6. Natural Gas and/or Petroleum Exploration Activities; Natural Gas and/or Petroleum Extraction Activities; Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Disposal/Storage Facility; Natural Gas and/or Petroleum Exploration, Extraction, or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage

4.2 Change of Use or Structure.

- A. A change of use is the initiation of a use that is in a different use category, as listed in Schedule 2, from the existing use of the site or structure. A change of ownership, tenancy, occupancy, or change from one (1) use to another within the same category, shall not be considered a change of use, unless the change would result in the enlargement or addition of a sign.
- B. Uses by Right. Any change of use of land or existing structures to a use permitted by right without Site Plan Review shall not require approval from the Planning Board. This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Code Enforcement Officer under Article XIV, Administration and Enforcement of this Law.
- C. Uses by Right Subject to Site Plan Review. Any change of use of an existing structure to a use permitted by right subject to Site Plan Review shall require Site Plan Review only if it involves the construction or enlargement of a structure, the addition of four (4) or more parking spaces, or the enlargement or addition of signs.

D. Uses by Special Use Permit.

1. A Special Use Permit shall be required for any change of use from a use that does not require a Special Use Permit to a use that does require a Special Use Permit.
2. Once a Special Use Permit has been granted, it shall run with the land and apply to the approved use and to all subsequent owners, tenants, and occupants engaged in the same use. The Special Use Permit shall also apply to any subsequent use of the property in the same category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Use Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by a Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.

ARTICLE V DIMENSIONAL REGULATIONS

5.1 Schedule of Uses and Dimensional Requirements.

- A.** Table 2, Dimensional Table, sets forth, by Zoning Districts, dimensional regulations and requirements such as required yard setbacks, height restrictions, and minimum lot sizes.
- B.** No structure or land shall be used except as provided on Schedule 2 as allowed is subject to and limited by any restrictions imposed by any applicable additional or other requirements set forth in this Law or set forth in any other applicable law.

5.2 Height Exceptions.

The height limitations of this Law, as shown on Table 2 shall not apply to the following structures: farm buildings and structures, church spires, belfries, cupolas, chimneys, ventilators, sky lights, water tanks, bulk heads, and other necessary mechanical appurtenances usually carried above the roof level.

5.3 Number of Dwellings on a Lot.

No more than one (1) dwelling per parcel shall be allowed in any District unless approved as a Planned Development District and the Town of Middleburgh Code Enforcement Officer may permit two (2) one-family dwellings on a lot that is twenty-five (25) acres or larger in the R-3 Zoning District only, and if lot size requirements can be met to accommodate future subdivision (if required). This includes use/installation of a separate waste disposal system, water source, and driveway access for second residence.

5.4 Yards (set in Table 2 and defined).

- A. Corner Lots.** On a Corner Lot, each side, which abuts a street, shall be deemed a front lot line, and the required yard along each such lot line shall be a required front yard. The Owner shall decide which remaining yards shall be a required side yard and the required rear yard.
- B. Side Yards for Row Houses.** Side yards for Row Houses shall be required at the ends of the row structure.
- C. Double Frontage.** For any through lot, fronting on two (2) different streets, both frontages shall comply with the front yard requirements of the District in which it is located.
- D. Obstructions at Street Intersections.** On a Corner Lot in any District, no fence, wall, hedge, sign or other structure or planting, shall be so located to limit visibility at a street intersection. In general, no such item with a height of over two and one-half (2 ½) feet and a width or length over three (3) feet should be allowed within the triangular area formed by the intersecting street lines for thirty (30) feet from the intersection. Lot grading and landscaping should not impede visibility and line of sight for thirty (30) feet.

ARTICLE VI OVERLAY DISTRICTS

6.1 Scenic Viewshed Overlay District

A. Intent.

1. It is the intent of the Town of Middleburgh to protect and conserve the scenic viewsheds identified herein, to ensure that the benefits found to be provided by such scenic viewsheds will not be lost for present and future generations and to protect the broader public interest.
2. These regulations are enacted with the intent of providing an equitable balance between the rights of the individual property owners to reasonably use private property and the rights of present and future generations of the public. This Section recognizes the rights of such and other regulations and controls, provided that such use, in the judgement of the appropriate agency or official of the Town, does not result in a significant loss or impairment to the scenic resource or the function it fulfills.

B. Applicability.

1. Any of the following uses or actions occurring on a parcel of land lying fully or partially within the SVD shall be subject to these supplementary regulations:
 - a) All Subdivisions that exceed the threshold of Minor Subdivisions as set forth in Article XVI of this Law, "Subdivision of Land."
 - b) The use or development of land that requires Site Plan approval pursuant to this Zoning Law.
 - c) All uses or development of land requiring the issuance of a Special Use Permit and/or zoning variance pursuant to this Zoning Law.
2. Prohibited Uses. The following uses currently permitted in the underlying Zoning District either subject to Site Plan Approval and/or Special Use Permit from the Planning Board are prohibited if they occur on parcels located entirely or partially in the SVD:
 - a) Telecommunication Towers.
 - b) Billboards.
 - c) Extractive Operations.
 - d) Clear Cutting, as described in this Law.
 - e) Adult Use Operations.
 - f) Wind Energy Facilities.
 - g) All uses that are that are currently prohibited in the underlying Zoning District shall continue to be prohibited in the SVD.
3. In order to grant approval for a Major Subdivision of property, construction, alteration of any principal or accessory use within the SVD, the Planning Board, or Zoning Board of Appeals, whichever is applicable, must find that the use or alteration is in compliance with the regulations of this Section and all other applicable regulations of this Law.

C. General Provisions.

1. Prior to initiation of any land disturbance or construction activity described above, within the designated Scenic Viewshed Overlay area, the owner of such property shall apply for and obtain approval from the Planning Board or Zoning Board of Appeals. To the maximum extent practicable, all plan review, hearing and decision required under this Section shall be coincident with other procedures and applications that may be before the Planning Board or Zoning Board of Appeals relating to the same or similar activity.
2. Visual Assessment Review Requirement. Applicants shall submit a visual assessment, which shall consist of the items listed below unless waived by the Planning Board or Zoning Board of Appeals. In assessing visual impacts, it is important to cover all possible viewpoints. If this is not practicable, key viewpoints shall be selected on major routes (e.g., roads, walkways, footpaths, and hiking trails) and at activity nodes (e.g., residential areas, important open spaces and landmarks). The Planning Board or Zoning Board of Appeals shall review and approve the vantage points from which the visual assessment shall be conducted prior to the analysis.
 - a) An aerial photograph at a scale appropriate to show the property for which an application has been submitted and other elements within the scenic viewshed.
 - b) Perspective drawings, photo simulations, plans, and section/elevation diagrams, and/or photographs.
 - c) A factual description of the existing site based on surveys conducted on site.
 - d) A description of the proposed development.
 - e) A description of the predicated level of impact.
 - f) Suggestions on the scope of mitigative measures (if necessary) to reduce the potential impact.
 - g) The Planning Board or Zoning Board of Appeals is authorized to require any additional information it deems necessary as part of its visual assessment review.
 - h) In evaluating the visual impact, the Planning Board or Zoning Board of Appeals shall consider whether or not the analysis was conducted during on-or-off leaf conditions, whether the existing or proposed vegetative materials will provide year-round screening, and whether the applicant has ownership control of any vegetative screening intended to mitigate visual impacts, e.g. vegetation which is within a road or utility right-of-way over which an outside agency has ownership and maintenance control.
3. Standards.
 - a) Vegetation and Landscaping.
 - i. The planting of trees is encouraged to shade and enclose a building or other development site and to define the edge of the public realm and private space.

Existing specimen trees shall be maintained to the extent feasible. Species selected for planting shall be appropriate to this climate and setting.

- ii. Minimal cutting for placement of structures is appropriate. Removal of contiguous areas of smaller trees is permitted subject to Code Enforcement Officer, Planning Board or Zoning Board of Appeals review and approval.
- iii. Wherever possible, if an applicant or owner seeks to open views, that should be accomplished by selective cutting of smaller trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

b) Structures.

- i. New development proposed should be designed to preserve distinctive features of the scenic viewshed, including tree canopy, stone walls, winding road character, and scenic views, and to limit visibility of new development.
- ii. New development adjacent to or within scenic open vistas shall be designed to avoid adverse impact to scenic resources.
- iii. For new Major Subdivisions, building sites shall be arranged to maximize the use of existing and proposed road segments to minimize new forest clearing.
- iv. Buildings and structures should be placed in small hollows or otherwise protected areas to preserve vistas of the scenic viewshed.
- v. Building and structure materials, colors, and textures should be designed to blend with the natural environment. The use of natural wood siding, stained or painted in an earth-tone color, is encouraged. Native stone is also an ideal material for building walls and for facades. White and light colors, brightly finished metal, and glossy surface materials reflect light and are discouraged. In general browns, greens, grays, and other earth tones are least obtrusive.
- vi. Windows should be of low reflectivity. Any large windows shall be partially screened from direct public view by trees. Upper and high windows should be smaller to reduce visual impact.
- vii. Utilities. The utility should cross the scenic road at the shortest possible distance. The utility shall place all pipe, wire, and appurtenances underground unless permitted otherwise. If aboveground structures are necessary, they shall be painted to blend in to the environment to soften the visual impact. The utility shall conduct its construction activities to disturb a minimum amount of vegetation and soil.

c) Landform.

- i. Cut and fill activity shall be minimized in all disturbed areas.
- ii. Natural drainageways, contours, and land forms shall be preserved.

- iii. Development along and/or projecting above ridgelines and other visually prominent locations is subject to the provisions of the Ridgeline Overlay District.
 - iv. Conservation easements may be used to provide natural buffers and vegetative screening between land uses, as well as between developed areas and public roadways.
- d) Circulation Systems.
- i. Circulations systems for both vehicular and pedestrian systems should be evaluated. In general, rural vehicular and pedestrian systems are curvilinear in alignment, a pattern that evolved out of historic systems following natural landforms. It is only in hamlets or crossroads areas that roads and streets should take on geometric forms reflecting the built environments they move through.
 - ii. Driveway widths and alignments should be designed to be visually sensitive. Add gentle curves in driveway layout to reduce visual impact.

6.2 Floodplain Protection Overlay District.

A. Intent.

The Floodplain Protection Overlay District (FPD) is established to manage areas in the Town as Federally Regulated Floodplains and Floodways. Additional review by the Town's Floodplain Administrator and additional standards established by the Town's Flood Damage Prevention Law are required for all uses and structures proposed within the Floodplain. The purpose is to protect the safety of the public and property from damage by flooding and to ensure that flood insurance is available to properties within such areas pursuant to the recommendations of the Federal Emergency Management Agency.

1. All development and activities in the Floodplain shall comply with the Floodplain Regulations as set forth by the Town of Middleburgh Local Law # 1 of 2004 (Flood Damage Protection).
2. New Parcels in Flood Protection District. Parcels in existence in the Flood Protection District (Special Flood Hazard Area as indicated on the most current Flood Insurance Rate Map) prior to December 31, 2007 can be utilized without necessity of an area variance if the parcel complies with the area requirements of the underlying Zoning District. Any new parcel proposed in the Flood Protection District must meet the corresponding area requirements when the only designated building site is in the regulated floodplain. If a new parcel has a designated building site located outside of the regulated floodplain, the underlying, less stringent Zoning District area requirement can be used.

6.3 Riparian Buffer Protection Overlay District (RPD).

The overall goal of this Section is to protect and encourage the restoration of the riparian resources of the Town of Middleburgh in order to protect the public health, safety, and welfare. Enhancing riparian habitat for water quality and wildlife is a main goal. Helping slow down flood waters before reaching larger waterbodies is also a priority.

A. Applicability.

1. A Riparian Buffer Setback of fifty-foot (50) buffer shall be maintained along the edge of mapped streams on the Town of Middleburgh Zoning Map. Setbacks shall be measured approximately fifty (50) feet from the centerline of the regulated stream or creek. This Riparian Buffer Setback shall be designed, managed, and maintained as a Riparian Buffer to protect stability of banks and edges, improve water quality, reduce the effects of erosion, flash flooding and contaminated runoff, and to act as a transitional zone between upland and aquatic habitat.
2. The Planning Board may require that no application of chemicals, vegetation removal, and/or mowing be permitted in the fifty-foot (50) stream buffer.
3. For the purpose of protecting riparian buffers and providing flood protection in the Town of Middleburgh, the provisions and standards shall be in addition to the use, bulk, and site development regulations applicable to any use located in any District to which the RPD is applied.

B. Use Regulations.

1. Permitted Uses, Special Permit Uses, Accessory Uses, dimensional standards and special requirements shall be established by the underlying Zoning District.
2. The following uses shall be specifically prohibited within the RPD:
 - a) Storage of Placement of Any Hazardous Materials. All sewage systems, both drain fields and raised systems, must adhere to a one hundred (100') foot buffer from perennial stream, in compliance with the New York State Codes, Rules and Regulations, Title 10.
 - b) Purposeful introduction of invasive species that may impact or reduce the persistence of other vegetation present within the stream corridor. For a listing of invasive vegetation to avoid, refer to the New York State Department of Environmental Conservation (NYS DEC) Advisory Invasive Plant List (periodically updated) and the NYS DEC Division of Material Management Bureau of Pest Management. If invasive or nuisance species are present on your property, NYS DEC may have developed a protocol to combat that species. Refer to the NYS DEC website for additional information.
 - c) Waste storage or disposal including but not limited to disposal and dumping of snow and ice, recyclable materials, hazardous or noxious chemicals, used automobiles or appliances, and other abandoned materials.
 - d) Mining or removal of soil, sand, gravel, and quarrying of raw materials.
 - e) Widening, straightening or any such alteration of beds and banks of streams except where the NYS DEC has issued a permit expressly allowing such activities on the parcel.
 - f) Applications of herbicides, pesticides, fertilizers, or other chemicals that contain hazardous substances as defined by Chapter V of the NYS DEC, Section 597.2 Hazardous Substance List, as amended.

- g) Construction or replacement of private wells within one hundred (100') feet of perennial streams, in keeping with Title 10 of the New York State Codes, Rules and Regulations.
- h) Altering habitat of rare, threatened or endangered species.

C. Site Plan Approval Requirement.

1. Within the Riparian Buffer Protection Overlay District, applications for Building Permits, Site Plan Approval, Area Variance, Use Variance, or other land development proposal, including Subdivision of land, occurring wholly or partly in the Riparian Buffer Protection Overlay District shall be submitted to the Planning Board for review. This shall be required for the following:
2. Within the Riparian Buffer Protection Overlay area, the Site Plan approval shall not apply to:
 - a) The repair and maintenance of existing structures.
 - b) Activities carried out pursuant to a previously approved Site Plan or Special Use Permit.
 - c) Flood control structures, bioretention areas, or other green infrastructure stormwater management practices, and streambank stabilization measures approved by the Schoharie County Soil and Water Conservation District, Natural Resource Conservation Service, Army Corps of Engineers, or NYS Department of Environmental Conservation.
 - d) Maintenance of roadways or impervious surfaces existing at the time of the adoption of this provision;
 - e) Conservation of soil, vegetation, water, fish, and wildlife.
 - f) Private sanctuaries, woodland preserves.
 - g) Culverts or other stream crossings necessary to construct a driveway, transportation route, or utility line to provide access and utilities to a parcel, which are designed to minimize negative impacts to the stream.
 - h) Public water supply infrastructure, including wells, or public wastewater outfall structures and associated pipes.
 - i) Public access and public recreational facilities that must be on the water including boat ramps, docks, foot trails leading to the stream, fishing platforms, and overlooks.
 - j) Outdoor recreation including nature study, hiking, horseback riding, swimming, camping, trapping, hunting, fishing, shell fishing, cross-country skiing where otherwise legally permitted.
 - k) Stone-dust or natural trail and related trail access when determined by the Planning Board to result in a minimum disturbance to existing trees and shrubs.
 - l) Open space uses incidental to the enjoyment and maintenance of adjacent residential, commercial, and industrial property such as open space for subdivisions and building setback areas, mowing for a trail.

- m) Public sewer lines and/or other utility easements.
 - n) Techniques to remove invasive species.
 - o) Agricultural activities on parcels that meet the New York State Department of Agriculture and Market's Definition of a farm operation shall not be subject to the requirements of this Section.
 - p) Work consisting of the repair and maintenance of any lawful use of land that was approved for such parcel on or before the effective date of this Zoning Law, or if no approval was required for such use, was lawfully in existence as of said date.
3. Applications for development within the Riparian Buffer Protection Overlay District will be evaluated by the Planning Board to ensure that:
- a) The proposed development will not result in degradation of scenic character and will be aesthetically compatible with its surroundings.
 - b) The proposed development prevents non-point source pollution to the maximum extent possible, by considering site conditions such as slope, soil type and erosivity, and vegetative cover.
 - c) The proposed development will not result in any modification to the floodplain area or floodway to cause any increased flooding on any other properties within the Town.
 - d) Grading and removal of vegetation at a development site is minimized and erosion and sediment control measures are in place and properly installed.

D. Maintenance and Protection of Riparian Setback Areas.

- 1. All owners of property that includes a Riparian Buffer Setback are encouraged to develop and implement a Riparian Buffer Maintenance Plan and are encouraged to use best management practices within the Riparian Buffer Setback area to maximize the functions and benefits for their property and downstream properties to restore the functions of the Riparian Buffer area over time.
- 2. Such practices include, without limitation:
 - a) Proper grading to reduce erosion of banks.
 - b) Mulching of exposed soils.
 - c) Establishing permanent vegetative cover including shrubs and trees.
 - d) The use of native plants adapted to the edge of waterway habitat.
 - e) Removal of invasive plants.
 - f) Limiting mowing and restoring the natural habitat.
 - g) Protection and stabilization of banks and impoundment edges.
 - h) Water quality protection, including regular cleanup and spill prevention.
 - i) Reduction of runoff volumes and velocity to prevent downstream damages and flooding. Such as, installation of rain barrels and other rain water harvesting; and encouraging rain water infiltration with rain gardens or terraces.
 - j) Voluntary removal of obstructions, unused equipment, and accessory uses.

- k) Removal of impervious surface cover.
- l) Use of porous pavement materials.
- m) Responsible storage of fuels and other chemicals and other potential pollutants.

6.4 Ridgeline Overlay District.

A. Intent.

The purpose of the Ridgeline Overlay District (RLD) is to establish clear guidelines for protection of the Town's hillsides and ridgelines, which are found largely at higher elevations and steeply sloped areas and serve to:

1. Retain major natural topographic features, such as drainage swales, steep slopes, watershed areas, view corridors, and scenic vistas.
2. Preserve and enhance the prominent landmark features, such as natural rock outcroppings, prominent trees and plants, other areas of special natural beauty, and stone walls and structures.
3. Preserve and introduce plants to protect slopes from erosion and minimize the visual effects of grading and construction on hillside areas.

B. Applicability.

For the purpose of protecting ridgelines, the provisions and standards shall be in addition to the use, bulk, and site development regulations applicable to any use located in any District to which the Ridgeline Overlay District is applied. The Ridgeline Overlay District is shown on the Town of Middleburgh Official Zoning Map.

1. The Ridgeline Overlay District is overlaid onto the underlying zoning districts. All provisions of the underlying districts shall be applied except where provisions of the Ridgeline Overlay District differ. In such cases, the more restrictive provision shall apply.
2. In order to grant approval for a Subdivision of property, construction, alteration of any principal or accessory use within the RLD, the Code Enforcement Officer, Planning Board, or Zoning Board of Appeals, whichever is applicable, must find that the use or alteration is in compliance with the regulations of this Section and all other applicable regulations of this Law.

C. General Provisions.

1. The provisions of this Section shall apply to all applications for land use development, including Site Plan, Subdivision, Special Use, Zoning Variances, Building Permits for new residential dwellings over five hundred (500) square feet in area, dwelling additions exceeding three hundred (300) square feet, and accessory structures exceeding three hundred (300) square feet, on any parcel of land lying fully or partially within the Ridgeline Overlay District.
2. To ensure the placement of structures outside of the exposed ridgeline area on proposed building lots, building sites, or vacant land, including areas of vegetation, shall be clearly designated on the applicable Subdivision Plat and/or Site Plan.

3. No land shall be developed, and no building or structure erected, expanded, or developed unless the Code Enforcement Officer, Planning Board or Zoning Board of Appeals finds that the development proposed will be consistent with the standards of the Ridgeline Overlay District and grants approval.
- D. Prohibited Uses. The following uses currently permitted in the underlying Zoning District either subject to Site Plan Approval and/or Special Use Permit from the Planning Board are prohibited if they occur on parcels located entirely or partially in the RLD:
 1. Telecommunication Towers.
 2. Billboards.
 3. Extractive Operations.
 4. Clear Cutting, as described in this Law.
 5. Adult Use Operations.
 6. Fuel Storage and Distribution Facilities.
 7. Wind Energy Facilities.
 8. All uses that are currently prohibited in the underlying Zoning District shall continue to be prohibited in the RLD.

E. Standards.

1. Height.

- a) The total height of any structure or accessory element attached to any structure shall be measured from the natural ground level to the top of the structure or to the top of the uppermost accessory affixed to the structure, whichever is higher.
- b) Restrictions on Height. Within the RLD, no principal building or accessory structure with a height of greater than thirty-five (35) feet shall be constructed.
- c) Structures shall comply with other height provisions of the Zoning Law if they are more restrictive.

2. Design Requirements.

- a) **Placement of Structures.** To the maximum extent practicable, buildings, structures, towers, or storage tanks or other improvements within any area defined as ridgeline shall not be visible above the top of the ridgeline, or above the top of vegetation located within the ridgeline area, from surrounding private property or public rights-of-way in adjoining lowlands or adjoining ridgelines by cause of excessive clearing, building or structure height, or location of any building or structure with respect to the top of the ridgeline.
 - i. Wherever practical, structures should be sited at the lowest elevation possible to be as visually inconspicuous as possible when seen from a distance and from lower elevations.
 - ii. No structure shall have a footprint greater than 2,500 square feet for a one-story house or 5,000 square feet for a two-story house, and no other structure shall have a footprint greater than 2,500 square feet.

- b) **Materials and Colors.** Structures should blend in with the natural surroundings through preferred materials such as stone and/or natural wood siding. Reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them should not be used as predominate colors on any wall, roof, or other structural surface.
- c) **Visibility.** All structures should be sited to avoid to the greatest extent practical, occupying or obstructing public views of land within the Ridgeline Overlay District. Public views shall be from any location listed on SEQRA visual environmental assessment form addendum (V-EAF) or as otherwise required by the Planning Board.
- d) **Lighting.** The location, height, design, arrangement, and intensity of outside lighting shall minimize glare and shall be directed and shaded such that light shall not be directed off-site. Exterior lighting in the Ridgeline Overlay District shall be controlled in both height and intensity and shall be in conformance with the requirements established herein. Under no circumstances shall the light level at any lot line exceed 0.2 foot-candle, measured at ground level. Floodlights shall not be used to light any portion of a principal or accessory structure façade, and all outdoor light sources mounted on poles or buildings or trees to illuminate driveways, sidewalks, walkways, parking lots, or other outdoor areas shall use fully shielded light fixtures. For purposes of this Section, a “full cutoff light fixture” is one in which no more than 2.5% of total output is emitted at 90 degrees from the vertical pole or building wall on which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond property boundary lines.
- e) **Vegetation.** Existing vegetation within ridgeline areas shall be preserved to the maximum extent practicable. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site to maintain native vegetation as a screen for structures, as seen from public roads or parks or other public views. Clear-cutting of all trees in a single contiguous area shall be prohibited unless expressly permitted by the Planning Board as part of an approval for Site Plan or Subdivision application.
- f) **Preservation of Scenic Features.** In any application subject to this Section, features that provide scenic importance to the ridgeline area shall be preserved to a reasonable extent. These features include but are not limited to individual healthy trees within open fields, historic structures, hedgerows, public or private unpaved country roads, and stone walls.
- g) **Signs.** No Signs are permitted that will be visible above the tree canopy.

6.5 Planned Development District (PDD).

A. Intent.

1. PDDs provide a procedure for allowing flexible land use and design through creative planning and design. PDDs allow development matched to the unique characteristics of the site and allow innovative development techniques that might not otherwise be possible through strict application of standard use, area, bulk, and density specifications.
2. Approved PDDs will enable greater flexibility than conventional zoning while providing a customized regulatory framework that recognizes the unique environmental, physical, and cultural resources of the project area and neighborhood. PDD legislation adopted by the

Town Board will replace the existing zoning for the parcel or parcels becoming PDDs and will become the basis for detailed design, review, and control of subsequent development.

3. PDDs shall advance the goals of the Comprehensive Plan, promote innovation in the design and layout of structures and encourage compact, pedestrian-oriented development and redevelopment, ensure adequate provision of community services, and preserve significant natural features and permanently protect open space resources.
4. PDDs shall encourage a mix of uses on one (1) site which is not attainable through traditional zoning. The intent of PDDs is not to circumvent the variance or traditional zoning amendment process to establish single uses which would not normally be allowed by the underlying Zoning District.
5. While flexibility is encouraged, it is intended that conformance with the Comprehensive Plan, municipal service availability, and the purposes of this Section shall ensure that the general welfare is protected through equal treatment under this uniform procedure. The Town Board shall consider the health, safety, and welfare of the residents, as well as the aesthetics of all proposed project approvals.

B. Objectives.

In order to carry out the intent of this Section, all approved PDDs shall:

1. Produce a development pattern in harmony with the land use intensity, transportation facilities, and community facilities objectives of the Comprehensive Plan.
2. Preserve significant natural topography, geological features, scenic vistas, and ecosystems.
3. Prevent the disruption of natural drainage patterns, soil erosion, and uncontrolled surface water drainage.
4. Preserve and integrate historically significant structures and sites with viable adaptive uses.
5. Use land efficiently, resulting in smaller networks of streets and utilities and thereby lowering development and maintenance costs.
6. Provide an adequate and integrated system of open space and recreation areas designed to tie the PDD together internally and link it to the larger community.
7. Use creative design on the site which allows an orderly transition of land uses from open space to agricultural to rural to commercial character.
8. Adhere to any applicable economic conditions, post-development agreements, or environmental mitigation which may be required.

C. General Standards.

1. In accordance with the criteria set forth below, the existing use, dimensional, sign, and parking regulations may be altered in order to establish a PDD; provided, however, that the standards are met.

2. **Ownership.** The tract of land for the project may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners of all property included in the project. In cases of ownership by multiple parties, the approved plan and its amendments shall be binding on all owners or their successors in title and interest.
3. **Location Requirements.** PDDs may be created in any Zoning District of the Town of Middleburgh.
4. **Minimum Area Requirements.** The minimum area required to establish a PDD shall be ten (10) acres.
5. **Maximum Residential Density.** The overall residential density of an approved PDD may exceed the maximum conventional development potential of the underlying District by no more than twenty percent (20%) as measured in dwelling units per acre.
6. **Minimum Setbacks.** The minimum setbacks required for the underlying Zoning District(s) shall be met at the periphery of the PDD.
7. **Water Supply and Sewage Disposal.** PDDs which include a significant number of residential units should be served by a community water system and be provided with sewage disposal facilities, if appropriate, in accordance with the requirements of the Town, County, and the New York State Departments of Health and Environmental Conservation.
8. **Open Space Requirements.** Common open space totaling not less than thirty percent (30%) of the PDD shall be provided in perpetuity. This land shall be exclusive of any land area used primarily for vehicular modes of transportation, including parking areas, garages, carports, and other features. A homeowner's association or similar mechanism for the long-term ownership and maintenance of this common open space shall be provided, subject to the approval of the Town Board, and a conservation easement to ensure further protection of this open space may be required.

D. Application Review and Approval Procedure.

1. **General.**
 - a) The Town Board shall consider any application for a PDD located within the Town of Middleburgh. However, approving a PDD is a discretionary act of the Town Board.
 - b) Whenever a PDD is proposed, before any Zoning and Building Permit shall be granted, and before any Subdivision Plat may be filed in the Office of the County Clerk, the prospective developer or his or her duly authorized agent shall apply for and secure approval of such PDD in accordance with the following procedures.
2. **Sketch Plan Review Procedure.**
 - a) Prior to the formal filing of a PDD application, the applicant shall submit a Sketch Plan of the proposal to the Town Board.
 - b) During Sketch Plan Review, the Town Board, in its legislative capacity, establishes the boundaries of the PDD and sets limits on the nature and range of uses, geometric and site

controls and overall project planning. Specifically, the Town Board shall review the Sketch Plan according to the following criteria:

- i. The proposal conforms to the Comprehensive Plan.
 - ii. The proposal meets local and regional needs.
 - iii. The proposal meets the intent and objectives and general requirements of this Section.
- c) Once the Town Board has accepted a PDD Sketch Plan for consideration, it shall refer the Sketch Plan to the Planning Board. Such refusal or acceptance and referral shall take place within thirty (30) days of submittal of the PDD Sketch Plan.
- d) The Planning Board, upon receipt of the referral, shall have forty-five (45) days to issue an advisory report to the Town Board on the PDD Sketch Plan. Failure to issue an advisory report within forty-five (45) days shall be equivalent to a neutral recommendation. The advisory report shall make a recommendation as to whether the Sketch Plan, as submitted, meets the following Sketch Plan Review criteria:
- 1) The proposal is conceptually sound in that it conforms to accepted design principles in the proposed functional roadway and pedestrian systems, land use configuration, open space, system drainage system, and scale of the elements both absolutely and to one another.
 - 2) There are adequate services and utilities available or proposed to be made available in the construction of the development.
- e) Within forty-five (45) days of the Planning Board, the Town Board shall take action to approve, with or without conditions, or disapprove the proposed PDD Sketch Plan, based on criteria set forth above.
- f) If approved or approved with conditions and accepted, the applicant may proceed to formal PDD application.
- g) The Sketch Plan shall include:
- 1) A map identifying the boundaries and physical characteristics of the proposed PDD, including uses and ownership of abutting lands.
 - 2) A conceptual development plan including a succinct narrative of the intent and attributes of the proposed District that describes the location, conceptual design, and use of any lots and structures.
 - 3) The proposed amount, location, and use of open space.
 - 4) Any anticipated changes in existing topography and natural features.
 - 5) The location of the site with respect to nearby streets, rights-of-way, adjacent properties, easements, and other pertinent features within two hundred (200) feet.

- 6) The general outlines of the interior roadway system and all existing rights-of-ways, and easements, whether public or private.
- 7) Preliminary use and dimension requirements, including:
 - a) List of all proposed uses;
 - b) Maximum development intensity of residential uses;
 - c) Floor area ratio for nonresidential uses;
 - d) Lot coverage;
 - e) Build-to-distances from public and private ways;
 - f) Setbacks for structures and parking areas;
 - g) Minimum lot size.
- 8) In addition, the following documentation shall accompany the Sketch Plan:
 - a) Evidence of how the proposed mix of land uses is compatible with the goals of local and area-wide plans.
 - b) General statement of how common open space is to be owned and maintained.
 - c) Description of ownership of the site.

E. Formal Application.

1. After Sketch Plan Review is complete, a formal application for establishment of a PDD shall be made in writing to the Town Board and shall be accompanied by the applicable fee. The application shall be accompanied by a Full Environmental Assessment Form as required by SEQRA.
2. The Town Board shall refer the application back to the Planning Board within thirty (30) days. The Town Board shall also refer the application according to the requirements of General Municipal Law, Section 239-m, 239-n, and 239-nn, and SEQRA.
3. The formal application shall describe the proposed physical changes to the project area in the report that includes graphics and a supporting narrative. The application shall contain enough facts and information for the Planning Board to make findings required under this Section. However, fully engineered plans and construction details are not required at this stage in the process. The following information is required; however, the level of detail shall be enough to provide the Planning Board with enough information to understand the proposed PDD:
 - a) The desirability of the proposed land use in the proposed location.
 - b) The existing character of the neighborhood.
 - c) Access, circulation, parking, and transportation management.
 - d) Proposed location, type and size of signs and driveways.
 - e) Existing state, county, or Town highways that provide access to the area.

- f) Vehicular traffic circulation features, including proposed highways and roadways within the PDD.
- g) Mobility (bikes, pedestrian, etc.) through the PDD.
- h) The general location of principal and accessory buildings in relation to one another and to other structures in the vicinity.
- i) The conceptual footprint, height and bulk of buildings and the intended use for such buildings.
- j) Other site improvements.
- k) Phasing program if phases are proposed.
- l) General landscaping concept and features.
- m) Preservation of open space and natural areas, including the amount and location of open space, recreation area, and pedestrian circulation areas and provisions for permanent protection.
- n) Infrastructure improvement preliminary plans, including water supply source and delivery, drainage, and energy.
- o) The general plan for the collection and disposal of sanitary waste.
- p) The proposed safeguards to be provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.
- q) Compatibility with the Comprehensive Plan.
- r) All proposed uses.
- s) Maximum development intensity of residential uses.
- t) Floor area ratio for nonresidential uses.
- u) Lot coverage.
- v) Build-to-distances from public and private ways.
- w) Setbacks for structures and parking areas.
- x) Minimum lot size.
- y) The number, size, and location of automobile parking areas and loading areas and the proposed access to such areas.
- z) Minimum lot frontages and building massing.
- aa) Preservation of historic structures.
- bb) Design standards and guidelines.
- cc) Green building materials to be utilized.
- dd) Floodproofing of structures, where required.
- ee) A proposed amendment to the Zoning Law, including at a minimum, a written metes and bounds description of the property and standards for development.
- ff) All material and data necessary to conduct review under the State Environmental Quality Review Act.

F. Planning Board Action.

1. The Planning Board may require such changes in the preliminary plans as are found necessary or desirable to protect the established or permitted uses in the vicinity and to promote orderly growth and sound development in the community.
2. The Planning Board shall make the required findings outlined below and recommend approval, approval with modifications, or disapproval to the Town Board of such PDD application and shall report its findings to the Town Board within sixty-two (62) days following the date of the referral from said Town Board, unless mutually agreed to by the applicant and the Planning Board.

3. Planning Board approval of the preliminary plans shall not constitute nor imply approval of a building project, nor imply a permit for said project.

G. Required Findings.

The Planning Board shall develop written findings that document the facts and information relied upon to reach its conclusions in rendering a decision on a PDD. The following mandatory findings must be addressed:

1. That the PDD is consistent with the objectives and standards of this Section.
2. That adequate community facilities and services exist and/or are to be accommodated as part of this PDD.
3. That the PDD establishes a mix of uses and a physical development pattern which would not be attainable through a traditional zoning amendment, as described in Article XIV, Zoning Amendment of this Law, or a Variance, as described in Article XII, of this Law.
4. That the PDD is compatible with the surrounding neighborhood context and character and is in conformance with the policies of the Comprehensive Plan.
5. That the PDD has mitigated potential undue adverse environmental impact as set forth during SEQRA review to the maximum extent practicable.
6. That the PDD will add to the long-term assets of the community and it will not erode the livability or economic viability of existing and neighboring areas.
7. That the open space and recreation areas and facilities provided are commensurate with the level of development proposed and the predevelopment open space resources potentially available for protection.
8. That the provisions to protect open space resources are sufficiently secured by dedication where appropriate and desirable or legal instruments and/or monitoring programs and/or establishments or use of an existing trust to ensure their continued long-term protection.

H. Town Board Action.

1. Upon receipt of the Planning Board's findings and recommendation, the Town Board may then consider the legal establishment of the PDD through Zoning District Map amendment. Any application for creation of a PDD shall be considered a Type I action under SEQRA.
2. Following receipt of the Planning Board's findings and recommendation, the Town Board shall hold a public hearing thereon upon such notice as is required by this Law for a Zoning Amendment and applicable provisions of the Town Law and the State of New York.
3. The Town Board shall render a decision on the application within sixty-two (62) days of the public hearing, unless an extension of time is agreed to by the applicant and Town Board, according to the following criteria:
 - a) That the PDD is consistent with the purpose and intent of this Law including, where applicable, the objectives and standards of this Section.

- b) That the PDD is compatible with the surrounding neighborhood context and character and is in conformance with the policies in the Comprehensive Plan.
- c) That the PDD has mitigated potential undue adverse environmental impact as set forth during environmental review to the maximum extent practicable.
- d) That the PDD will add to the long-term assets of the community and will not erode the livability or economic viability of existing and neighboring areas.
- e) That the open space and recreation areas and facilities provided are commensurate with the level of development proposed and the predevelopment open space resources potentially available for protection.
- f) That the provisions to protect open space resources are sufficiently secured by dedication where appropriate and desirable or legal instruments and/or monitoring programs and/or establishment or use of any existing trust to ensure their continued long-term protection.
- g) The Town Board may, if it believes necessary in order to fully protect the health, safety, and general welfare of the community, attach to its zoning resolution approving the zoning change additional conditions or requirements applicants must meet. Such requirements may include but are not limited to:
 - i. Visual and acoustical screening.
 - ii. Land use mix.
 - iii. Pedestrian and vehicular circulation.
 - iv. Parking and snow removal.
 - v. Sites for public services.
 - vi. Protection of natural and/or historical features,
 - vii. Requirements or conditions during the SEQRA process and/or voluntary agreements between the applicant and the community, including economic incentives or infrastructure improvements.
- 4. If the change of zone is approved by the Town Board, the Town of Middleburgh Official Zoning Map shall be amended to define the boundaries of the PDD, and such amendment shall be advertised and recorded in accordance with the requirements of New York State Town Law.

I. Site Plan Review Within Established PDD.

- 1. Application. Application for approval of a building project within an established PDD shall be made in accordance with the procedures of Article IX, Site Plan Review. Application shall be made by the owner(s) of developer(s) of the area to be occupied by the building project.
- 2. No Building Permit or Certificate of Occupancy shall be issued for any project within a PDD until the Planning Board determines the proposed project is consistent with the approved PDD.
 - a) The development standards approved by the Town Board shall guide the planning and design of subsequent projects and/or phases of development within the PDD.
 - b) A building project within a PDD shall conform in all respects to the approved plans.

- c) The Planning Board, as appropriate, shall document that the following requirements have been met prior to approval of a development project within a PDD:
 - i. The project is in conformance with the approved PDD.
 - ii. The minimum setbacks required for the underlying Zoning District shall apply to the periphery of the project.
 - iii. All other requirements of the District, except those modified or specifically deemed not applicable by the administrative officer, shall be met.
 - iv. The development plan shall specify reasonable periods within which development of each phase of the PDD may be started and shall be completed.

J. Subdivision Review.

Applications for Subdivision in a PDD shall be made to the Planning Board in accordance with Article XVI, Subdivision, of this Law. In the event of a conflict between such Subdivision regulations and this Section or any requirement imposed hereunder, the provisions of this Section of such requirements shall apply.

K. Consultant Review Fees.

The Town Board and the Planning Board may require an applicant for any review, permit or approval to deposit in escrow a reasonable amount established by the Board to pay fees and/or costs of any engineer, consultant, attorney designated by the Board to review such application. The fees and/or costs charged by such engineer, consultant, or attorney in connection with such review will be charged against the sum deposited in escrow. Any amount remaining shall be returned to the applicant within forty-five (45) days of final action of the application.

L. Conditions to Run with The Land.

All conditions imposed by the Town Board, including those the performance of which are conditions precedent to the issuance of any permit necessary for the development of all or any part of the entire site, shall run with the land, and shall neither lapse nor be waived as a result of any subsequent change in the tenancy or ownership of any or all of said area. Such conditions shall further be part of any certificate of occupancy issued for any use or structure in such development.

M. Existing Rights Preserved.

Any use lawfully occurring in any PDD in existence on the effective date of this Law shall be permitted to continue, and any buildings, appurtenant structures or facilities accommodating such uses may be renovated, repaired and maintained without being subject to the provisions of this Section, provided that any change in use or new or additional building projects shall be so subject. Applications pending on the effective date hereto for a building project in an existing or proposed PDD shall continue to be reviewed and acted upon by the administrative board conducting such review, and final action of such Board shall be deemed to be a recommendation to the Town Board hereunder.

N. Expiration of Approval.

PDD Legislation Repealer.

1. The Town Board shall act to return the property to its prior Zoning District classification if it finds that:
 - a) Performance requirements which may have been specified by the Town Board in its PDD approval action, such as a time limit for either initiation or completion of improvements and other construction work on the proposed development have not been met, unless the Town Board, upon specific application and for good cause, authorizes an extension of such performance requirement.
 - b) The PDD approval has expired by the failure of the project sponsor to make substantial and continuing progress in the development of the project for more than three (3) years from the date of final approval. The determination of substantial and continuing progress shall be determined solely by the Town Board which may consider any number of factors in making its determination, including the securing of project financing and changed market conditions.
2. If a PDD expires, any buildings constructed or used may continue as a nonconforming use and such shall continue to be bound by the previous PDD approval.

O. PDD Amendment Procedure.

1. An application for amendment of an established PDD shall be made in writing to the Town Board and shall be accompanied by a full environmental assessment form or draft EIS as required by SEQRA. The Town Board shall refer the application to the Planning Board within thirty (30) days of the receipt of application.
2. The application shall describe the proposed physical changes to the project area in a report that includes graphics and a supporting narrative. The application shall contain enough facts and information for the Planning Board to make the findings required under this Section.
3. Procedure. The procedure for an amendment of an existing PDD shall be the same as that required to establish a new PDD, as described herein.

ARTICLE VII SUPPLEMENTAL DEVELOPMENT STANDARDS

7.1 Performance Standards for Commercial Uses.

A. Application and Purpose.

New commercial development shall be appropriate in scale and design. To meet the goals of the Comprehensive Plan, design shall balance continuity of traditional and contemporary approaches, but maintain the rural local character and visual appearance of the community. All new or redeveloped commercial and community structures over two hundred and fifty (250) square feet in size, multi-family developments and other uses where noted must meet the performance standards in this Section. It is the responsibility of the Planning Board and Zoning Board of Appeals to attach conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings, with the purposes of this Law and with the Comprehensive Plan. These Boards shall deny any proposed use which will not or cannot be operated in a manner that satisfies the criteria in this Law.

B. Standards.

1. Building Design Standards.

- a) *Applicability.* Agricultural buildings, single, two-family, and three-family residences are exempt from this Section. These design guidelines cover all new construction, when a change of use occurs, building additions over two hundred and fifty (250) square feet, and exterior renovations of any commercial building in the Town of Middleburgh. Exterior renovations, for this paragraph, shall mean modifications, changes to windows and doors, and any similar changes, except for replacement in kind. Painting and similar maintenance shall not be included.
- b) *Context and Compatibility.* These standards and guidelines establish an expectation that new development is similar in context and compatible with existing development. Context and compatibility with respect to neighborhood buildings can be judged by the following major points of comparison:
 - 1) Roof shapes, slopes, and cornices are consistent with the prevalent types in the area.
 - 2) Rhythm of building spacing along street and overall scale is not interrupted.
 - 3) Proportions for facades and window openings are in harmony with traditional types within the District.
 - 4) Materials, textures, and colors are similar, with natural and traditional building materials preferred.
 - 5) Site details (porches, entrances, signs, landscaping, lighting, screened parking and mechanical systems) complement traditional examples in the area.
- c) *Building Placement.*
 - 1) Buildings shall be designed so that entrance doors and windows, rather than blank walls, garages, side walls or storage areas, face the street. Blank walls for commercial applications are discouraged but allowed at the discretion of the Planning Board under certain circumstances such as when the structure is along an alley or when facing another blank wall.



✓ *Service Bays & Parking along the Side of Buildings*



X *Service Bays & Parking along Primary Street*

- 2) The front facade of the building shall be parallel to the main street unless traditional orientation of buildings on that street differs for most buildings.
- 3) Where rear parking is provided, the provision of a secondary rear entrance is encouraged. The design of the rear entrance and facade shall not compete with the main entrance but be appropriately signed and marked to indicate a rear entrance.
- 4) All primary building entrances shall be accentuated. Accents may include a change in roofline, recessed or protruding entrances or the use of canopies, porticos, or overhangs.



✓ *Facade with Recess and Projections*



X *Facade without Recesses and Projections*

d) *Building Scale.*

- 1) The scale and mass of buildings shall be reviewed by the Planning Board during Site Plan Review and determined to be compatible with that of adjacent and nearby buildings as viewed from all exposed (public) vantage points.
- 2) To minimize the apparent scale of buildings greater than forty feet (40') in width, facades facing the main street shall be broken with periodic setbacks, facade breaks, and rooflines should include offsets and changes in pitch. Other design features such as porches or cupolas, window bays, separate entrances and entry treatments, or the use of sections that may project or be recessed may also be used.

- 3) Any Commercial building located in the Town of Middleburgh shall not be larger than 30,000 square feet.

e) Building Facades.

- 1) Exterior materials of new construction shall be compatible with those traditionally used and may include wood or wood simulated (clapboard, board and batten or shingles, vinyl, red common brick, natural stone, and man-made masonry materials if they simulate brick or stone and have the texture and architectural features sufficiently similar to that of the natural material to be compatible). Primary facade materials such as stucco, sprayed-on textured surface finishes, modular metal panels, and concrete block are not permitted, unless under certain circumstances the Planning Board deems these materials do not compromise the design standard purposes of this Law.
- 2) A variety of architectural features and building materials shall give each building or group of buildings a distinct character.
- 3) Blank facades with no windows or doorways shall not be permitted along any exterior wall facing a street, parking area, or walking area or other public right-of-way, but allowed at the discretion of the Planning Board under certain circumstances such as when the structure is along an alley or when facing another blank wall.
- 4) Walls or portions of walls, where windows are not provided, shall have architectural treatment that are like the front facade including materials, colors, and details. Examples of architectural treatments include but are not limited to: masonry (but not flat concrete block), concrete or masonry plinth at the base of the wall, belt courses of a different color or texture, projecting cornices, projecting canopies, decorative tilework, medallions, translucent glass, vertical/horizontal articulation, lighting fixtures.



✓ *Appropriately Designed; No Blank Walls, Side Parking Lot*



X Standard Concrete Block and Metal Façade

- 5) New buildings shall relate to the surrounding context to form a unified sense of landscape in each District. Repetition of design in multiple building projects should be avoided.

- 6) Formula-based Architectural Styles. All businesses, including commercial franchise and formula-based businesses shall meet all design standards of this Law. Formula-based architectural styles including, but not limited to uniform color schemes, facades, or signage shall be allowed provided it is of a style consistent with the design standards of this Section.



✓ *Appropriate Formula-based Architectural Style Consistent with Rural Surroundings*



X *Inappropriate Formula-based Architectural Style Inconsistent with Rural Surroundings*

- 7) Muted and traditional colors are preferred, with contrasting textures and tones used to add interest. Building colors shall emphasize earth tones and colors common to traditional/natural building materials. Strong color may be used as an accent.



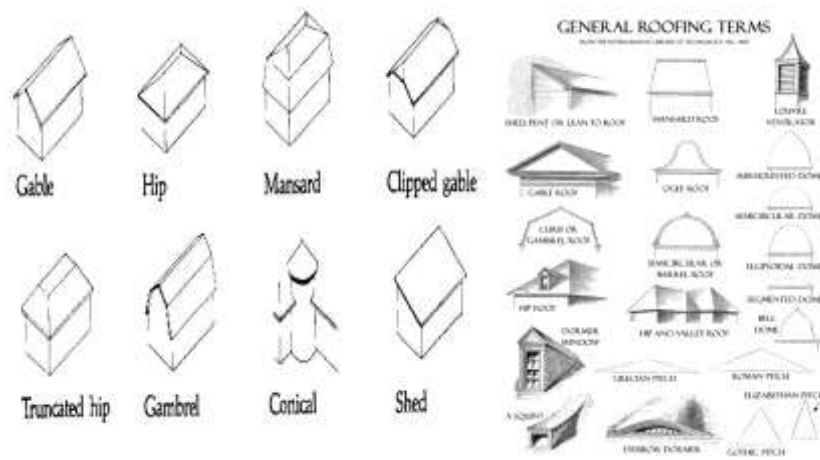
✓ *Earth Tones, Neutral Colors*



X *High-Intensity Colors*

f) *Roof Types and Materials.*

- 1) Roofs shall be proportional to the rest of the building and be in keeping with the character of adjacent buildings. Buildings design shall avoid flat and mansard roofs.
- 2) Peaked or slope roof dormers and cupolas shall be utilized, when possible.
- 3) Flat roofs are prohibited, except with a continuous parapet around the entire structure.
- 4) Roofing materials of slate, metal, asphalt or fiberglass shingles or cedar shakes or composites that have the same appearance as these materials are acceptable.
- 5) Porches, pent roofs, roof overhangs, hooded front doors or other similar architectural elements that define the front entrance to all establishments shall be utilized.
- 6) Multiple Buildings within a development shall have a variety of different roof overhang profiles, proportioned to replicate a traditional downtown street-front rhythm.
- 7) Rooftop mechanical apparatus, except solar arrays and green roof systems, shall be hidden or screened.



Roof Forms



✓ ***Flat Roof with a Continuous Parapet***



X Non-Continuous False Front Roof

g) Windows.

- 1) The spacing pattern and detailing of windows and window openings shall be reviewed by the Planning Board during Site Plan Review and determined to be compatible with adjacent buildings, including historic buildings, where possible. When necessary repair of windows is required, replacement windows shall match the original window in style, configurations, and size.
- 2) Smoked, reflective, or black glass in windows is prohibited, unless permitted in other Sections of this Zoning Law (e.g. Adult Entertainment Use).
- 3) The relationship of width of windows to the height of windows in a building shall be visually compatible with adjacent buildings.

h) Drive-Through Facilities.

- 1) The design of Drive-Through Facilities shall provide convenient, comfortable, and safe pedestrian movement to elements which will be accessed by pedestrians from within the site, from street sidewalks, and from transit stops. The design of Drive-Through Facilities shall also enable a safe and efficient level of vehicular traffic functions.
- 2) Drive-Through Windows shall be placed at that portion of the building that minimizes impacts to adjacent properties and traffic safety. Adjacent properties shall be screened from any glare from vehicles or building lights resulting from use of a Drive-Through Window.
- 3) The design of all aspects of the Drive-Through Facilities is to respond to the character of the neighborhoods and corridors in which they are located. This response to context shall include specific site planning and architectural treatment that reflects the surrounding built form and the design shall enhance the local context.
- 4) Drive-Through Facilities shall be designed to reinforce street edges and contribute to high quality streetscapes through a combination of site planning, stacking lane configuration, pick-up/canopy locations, and built form architectural quality.
- 5) Drive-Through Facilities shall be designed to achieve superior landscaping that contributes to high quality streetscapes and mitigates the negative impacts of vehicular functions through a high quality of soft landscape design, hard landscaping elements, and the use of other elements such as berming or freestanding architectural features.
- 6) Any outdoor eating area associated with Drive-Through Facilities shall be maintained, landscaped and physically separated from any off-street parking area or driveway. Outdoor eating shall be allowed only if all parking and vehicular travel areas have a dust-free (hard) surface.

- 7) Drive-Through Facilities adjacent to or integrated in shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center.



✓ *Drive-Through Design that Responds to Character of the Neighborhood*



X *Drive-Through Design that Does Not Respond to the Character of the Neighborhood*

i) *Accessory Equipment.*

- 1) All roof, wall, or ground mounted mechanical equipment including, such as, heating and air conditioning units, exhaust fans, etc. shall be confined within the principal structure or within an area enclosed by a wall, screen, fence, berm or hedge of sufficient height and density to screen the equipment year-round from view from adjacent streets, properties, and parking lots. No equipment shall be in front of a building and the preferred location is to the rear of the building.
- 2) All dumpsters or other trash containers shall be fully enclosed by a fence or enclosure and a minimum of twenty-five percent (25%) of the enclosure or fence shall be screened by landscaping. No dumpster shall be in front of a building and the preferred location is to the rear of the building.



✓ *Screened Ground Level Equipment*



X Unscreened Ground Level Equipment



X Unscreened Rooftop Equipment



✓ Screened Rooftop Equipment



7.2 Outdoor Lighting.

A. Applicability and Purpose.

This Section sets criteria for providing lighting in outdoor public places to ensure safety and reduction of glare. It provides standards to protect drivers and pedestrians from disabling glare from non-vehicular light sources that shine directly into their eyes and thereby impair safe travel, and to protect neighbors from nuisance glare from poorly aimed or un-shielded light sources. Lighting of a site shall provide security and visual interest while not projecting glare onto adjacent properties. All new outdoor fixtures installed and thereafter maintained, other than serving agricultural buildings, one-family dwellings, two-family dwellings or three-family dwellings shall comply with the criteria as specified below. All outdoor light fixtures using an incandescent lamp with a cumulative wattage of one hundred fifty (150) watts or less are exempt from all the requirements of this Section.

B. General Requirements.

All outdoor lights and illuminated signs shall be designed, located, installed, and directed in such a manner as to prevent objectionable light at and across property lines, and to prevent glare at any location on or off the property. The Town encourages, and in some cases the Planning Board may require, that the minimum lighting levels be used to attain efficient and effective use of outdoor lighting. The latest recommended levels for outdoor lighting set by the Illuminating Engineering Society of North America (IESNA) shall be observed, except light levels for ATM machines shall be in accordance with the New York State ATM Safety Act. Where no standards are available from the IESNA, the applicable standard shall be determined considering the levels for the closest, IESNA activity.

1. **Light Trespass.** The intensity of lighting shall be appropriate to illuminate the location for security, without glare to adjoining properties. Mitigation to avoid or minimize light trespass may include landscaping and berming and shall be at the discretion of the Planning Board to ensure adjacent residential property is not adversely impacted by light trespass.
2. **Height.** Unless specified elsewhere herein, the maximum allowable height of a freestanding luminaire shall be eighteen (18') feet above the average finished grade and fourteen feet (14') for pedestrian walkways and parking lots adjacent to residential uses. Lighting fixtures shall not be mounted more than the maximum permitted building height.

3. Time Controls. All nonessential lighting shall be turned off after business hours, leaving only the necessary lighting for site security, which shall be reduced to the minimum level necessary. “Nonessential” can apply to display, aesthetic, parking, and sign lighting. Motion-sensor security lighting is encouraged to promote safety and reduce the amount of night lighting in the Town.
4. Electrical Feeds. To improve the aesthetics of the area, the Planning Board shall require all electrical feeds to lighting fixtures and standards be run underground, not overhead.
5. The number of light fixtures and the intensity of lighting shall be appropriate to illuminate the location for safety, without glare to adjoining properties.
6. Full-Cutoff Fixtures shall be required to reduce glare.
7. Lighting fixtures shall be aimed and shielded in a manner that shall not direct illumination on adjacent residential properties.
8. Gas Stations. Island canopy ceiling fixtures shall be recessed into the canopy ceiling so that the bottom of the fixture is flush with the ceiling.
9. Exterior lighting for uses that require Site Plan Review shall highlight building elements or other distinctive features rather than attract attention to the light fixture itself. Lighting that attracts attention to itself, such as neon tubing surrounding display windows, or flashing, pulsating, glaring, or similar dynamic lighting is prohibited.
10. Light fixtures attached to the exterior of a building for uses that require Site Plan Review, shall be architecturally compatible with the style, materials, colors and details of the building and surrounding area. The type of light source used on the exterior of buildings, signs, parking areas, pedestrian walkways and other areas of a site, and light quality produced, shall be the same or compatible.
11. All poles and standards used to support outdoor lighting fixtures for uses that require Site Plan Review shall be anodized or otherwise coated to minimize glare from the light source.
12. Recreational Facilities, Public or Private. Lighting for parking, walkways, and buildings at recreational facilities shall comply with the requirements of this Section. Lighting for sports fields, tennis courts, golf courses, gun clubs, and similar outdoor recreational facilities may exceed the eighteen (18’) feet height maximum at the discretion of the Planning Board provided that the following special standards and conditions are met:
 - a) The proposed pole height is required to illuminate the center of the field while avoiding direct glare on adjacent properties.
 - b) The fixtures will be fully shielded to prevent light spillage on adjacent properties and to prevent sky glow.
 - c) The lights shall be tuned off when not in use.
 - d) The proposed lighting levels conform to the recommendations of the Illuminating Engineering Society of North America, and/or International Dark Sky Association for playing fields.

- e) The Planning Board may impose additional standards or conditions it determines necessary to mitigate potential adverse light impacts.

C. Prohibited Lighting.

1. Blinking and flashing lights.
2. Up lighting that is unshielded.
3. The use of laser lighting for outdoor advertising or entertainment and the operation of search lights for advertising purposes.
4. The use of mercury vapor lamps, greater than forty (40) watts is prohibited.
5. Unshielded wall pack-type fixtures are prohibited.

D. Exemptions.

1. Temporary Holiday lighting used for forty (40) days or less per year.
2. Emergency lighting or temporary construction lighting, as may be required by a public agency.
3. Lighting associated with a permissible outdoor event.
4. Outdoor light fixtures using an incandescent lamp with a cumulative wattage of one hundred fifty (150) watts or less.

E. Maintenance.

Lighting fixtures shall be maintained in good condition so that they always meet the requirements of this Section.

F. Plan Submission.

See Article IX, Site Plan Review application requirements. Lighting plans shall be included in Site Plan Review. Lighting plans submitted for review and approval for Subdivision and land development and Site Plan Review shall include a layout of the proposed fixture locations, and typical specifications for the fixtures. The Planning Board may also request foot-candle data that demonstrate conforming intensities and uniformities; and a description of the equipment, glare control devices, lamps mounting heights and means, hours of operations, maintenance methods proposed, and illumination intensities plotted on a ten (10) foot by ten (10) foot grid.



✓ *Recommended Gasoline Station Canopy*



✓ *Appropriate Lighting Which Adds Visual Interest and Highlights Aspects of the Building*



X *Inappropriate Lighting Which Creates Glare onto Adjacent Streets and Properties*

7.3 Landscaping and Screening.

A. Applicability and Purpose.

Existing vegetation and new plantings help integrate new development in rural areas, help maintain visual quality, screen and buffer adjacent uses, and softens or mitigates negative impacts of new development. All new or redeveloped commercial, multi-family, community uses, and parking lots shall be required to meet landscape standards. Landscape standards as outlined in this Section are also required for a change in use, and buffering existing farms from new, changed, or adjacent development.

B. General Requirements.

1. **Buffers.** Landscape buffers shall be provided between all residential and new commercial uses. (See Section 8.1, for buffering requirements between commercial, industrial, residential and agricultural uses). Buffers may include planted trees and shrubs, hedgerows, berms or existing forestland. The width of such buffer areas will depend upon the topography, scale of the use, and their location on property but shall normally be between fifty (50') and two hundred (200') feet. Landscaping shall be an integral part of the entire project area and shall either buffer the site from or integrate the site with the surrounding area or both.
2. **Existing Vegetation.** Building placement and lot layout shall be designed to relate to and incorporate existing vegetation. Insofar as practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan.
3. **Landscape Components.** Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Invasive Species which are prohibited or otherwise regulated under 6 NYCRR Part 575 shall not be included in landscape plans approved by the Town of Middleburgh Planning Board. Selected landscape plants shall be native to the area to the extent practicable. New development shall be landscaped to provide visual interest for all four (4) seasons by including deciduous trees, conifers, perennials, and bulbs. Landscape plantings of shrubs, ground cover, and shade and evergreen trees, and other materials such as rocks, water, walls, fences, paving materials and street furniture, shall be provided to create pedestrian scale spaces, where appropriate, and to

maintain landscape continuity within the community. Where a proposed project involves extensive land clearing or removal of existing trees, the Planning Board may require, especially in Subdivisions, that shade trees be planted and maintained along roads, preferably between the road edge and sidewalk, if present, or within a ten (10') foot setback from the road edge to reinforce rural character.

4. Parking Lots. Landscape requirements for parking lots are contained in Section 7.4 (I) below.
5. Landscaping shall not interfere with overhead power lines.
6. Landscaping of a site should blend in with the scale and appearance of neighboring uses and shall be compatible with the prevailing character of the neighborhood and overall community. Landscaping shall be used to create boundaries and transitions between areas of differing development intensities, as well as to separate areas of incompatible land uses.
7. All green space required by the Planning Board shall be designed as an integral part of the overall site design and shall be appropriately maintained. Where appropriate, green space should be designed to connect landscape patterns on adjacent properties to maintain any existing potential for future greenways or trails.
8. Where possible, design landscaping to maximize energy conservation, by shading the southern exposures and shielding the northern ones.
9. Berms, if used and/or required by the Planning Board, shall emulate natural landforms of local terrain.
10. Screening. Open storage areas, exposed machinery, and areas used for storing and collecting rubbish shall be screened from roads and surrounding land uses. Suitable types of screening include wood fences and dense evergreen hedges five (5) feet or more in height. Where evergreen hedges are proposed, a temporary fence shall be built to provide screening until the evergreens are sufficient in height.
11. Salt Tolerance. Road salt is a common factor in the demise of landscape plantings. Plantings near roadways, parking lots, and in areas that receive drainage from those portions of the site should be selected based in part on their salt tolerance.

C. Landscape Plan.

The following elements shall be included on the landscape plan as part of the Site Plan application presented for Site Plan Review:

1. The plan shall be prepared and stamped by a licensed landscape architect, engineer, or architect unless waived by the Planning Board.
2. Landscaping required pursuant to an approved Site Plan shall be installed or funds deposited in, or a certificate of deposit issued, by a bank or trust company located and authorized to do business in this State, under an agreement approved by the Town Attorney prior to temporary occupancy and installed before the issuance of final Certificate of Occupancy.
3. The following elements shall be included on the landscape plan as part of the Site Plan application presented for Site Plan Review:

- a) Existing Vegetation: Graphic depiction of existing vegetation “TO REMAIN” and “TO BE REMOVED.” Distinctive (e.g. native) species and colonies of vegetation shall be identified.
- b) Species and caliper size for all existing trees six inches (6”) diameter at breast height (dbh) and greater to be removed shall be provided in table form.
- c) Proposed Planting: Graphic illustration of the mature tree canopy size, and diameter/spread of shrubs and shrub/herbaceous plant massing.
- d) A Plant Schedule shall list the common name, botanical names, size, quantity, spacing requirements, and root condition of all proposed plant material.
- e) Percentage of green space existing and proposed for the site.
- f) Percentage of parking areas devoted to landscaping.
- g) Snow storage areas.



✓ *Landscaped Site Utilizing Landscaping to Create a Unified and Coherent Design for the Property Including Landscaped Planters, Outdoor Seating Areas, Etc.*

7.4 Parking Standards.

A. Applicability and Purpose.

The Town of Middleburgh desires to balance the need for safe, efficient parking lots, and maintaining the rural and historic character found along roads within the Town. Because of the visual prominence of parking lots in many developments and commercial establishments, the Town of Middleburgh has identified the need to regulate the appearance and design of parking lots and are subject to parking requirements as outlined below.

B. Off-Street Automobile Parking Spaces.

1. Off-Street Parking. Off-Street Parking shall not be visible from public view to the maximum extent possible.
2. The minimum cumulative number of spaces shall be determined by the number of dwelling units, bedrooms, floor area, members, equipment, employees, and/or seats contained in such new buildings or structures, or added by alteration of building or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures. Since uses vary widely in their need for off-street parking, the parking requirements shall be based on the specific operational characteristics of the proposed use at the time of Site Plan Review permitting by the Planning Board.

The Planning Board, in its sole discretion, shall determine the parking requirements for any proposed use. When making the decision, the Planning Board shall consider:

- a) Parking spaces shall be enough to satisfy eighty-five percent (85%) of the anticipated peak demand or maximum capacity of an establishment. In most instances, requiring spaces beyond the eighty-five percent (85%) peak demand is likely to result in parking lots that are larger than necessary.
- b) The size of the structure and site.
- c) The environmental, scenic or historic sensitivity of the site. To protect these resources, the Planning Board may allow a reduction in the size of the parking lot.
- d) The Planning Board may refer to generally accepted traffic engineering and planning manuals. However, such standards should be used as a guide only.

C. Calculation of Required Spaces.

In the case of a combination of uses, the total requirements of parking spaces shall be the sum of the requirements of the various use, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of space is required, a full space shall be provided.

D. Location of Required Spaces.

In any Residential District, no open or enclosed parking area shall encroach on any required front yard. For commercial uses, parking lots shall be on the side or rear of the building. If front parking is the only feasible location for parking due to lot configuration, such parking shall be landscaped and screened. Any parking lot for any use in any Zoning District shall be setback one hundred (100) feet from any wetland and waterbody.

E. Set-aside for Future Parking in Phased Projects.

For projects consisting of more than one (1) phase, or for those anticipating significant growth, the Planning Board may require that an applicant set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be landscaped but may not be used in a manner that would prevent it from being used for parking in the future.

D. Stacking Space and Aisle Width.

Adequate stacking space (throat area) within the parking area must be provided so that exiting vehicles do not block access to parking spaces while waiting to exit. It may also be necessary to provide space to prevent entering traffic from backing up onto the public roadway. Aisles within parking lots shall allow adequate room for vehicles to move smoothly into and out of parking spaces. The necessary aisle width shall be determined based on the degree of which parking spaces are angled and shall range from twelve (12') to twenty-five (25') feet.

G. Cross-Access and Shared Parking.

In cases where two (2) or more commercial developments are adjacent, the Planning Board may require cross-access easements between parking lots to provide interconnected parking lots and to facilitate traffic and control access on the main road. Shared parking facilities are encouraged.

H. Loading and Service Areas.

Loading areas vary with the specific uses proposed. Requirements for the number and locations of loading facilities shall be established by the Planning Board as with parking requirements, based upon the following considerations:

1. The expected number of trucks using the loading facilities at times of peak usage.
2. The type of business, size of structure, and size of trucks servicing the structure.
3. The need to ensure safety by separating truck traffic and loading operations from pedestrian and automobile circulation.
4. The need to screen trucks and loading facilities from publicly accessible areas as well as from abutting properties, including the need for vegetative screening, buffers, and fencing.
5. In addition, the following standards shall be followed for loading docks:
 - a) All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area or access way.
 - b) Loading areas or docks shall be placed behind or on the side of buildings in visually unobtrusive locations from the primary street to the maximum extent possible as determined by the Planning Board in consultation with the applicant. Screening and landscaping shall prevent direct views of the loading areas from adjacent properties or from the public right-of-way. Screening and landscaping shall also prevent spillover glare, noise, or exhaust fumes. Screening and buffering shall be achieved through walls, fences, and landscaping and shall be a minimum of five (5) feet tall and shall be visually impervious. Recesses in the building or, or depressed access ramps may be used. Each required loading berth may be open or enclosed. A loading zone is an area of at least four hundred twenty (420) square feet used for loading or unloading cargo, products, or materials from vehicles with minimum dimensions of twelve (12) feet by thirty-five (35) feet. The area is to be either paved or dust and mud free surface (not lawn area) which shall be located outside any public right-of-way.

I. Landscaping of Parking Lots.

1. Perimeter Parking Lot Landscaping. Parking lots located on the side and/or front of a building, shall be screened from public view with landscaping, buffering, or screening. This may be accomplished using earthen mounds, wood or masonry walls, trees and shrubbery, or any combination to screen parking lots from streets and adjacent properties. Such screening shall be three (3) feet high and visually impervious. The height of any required screening shall decrease where driveways approach sidewalks or walkways and shall not interfere with clear sight triangle requirements. Safety and visual

access for vehicles shall be maintained by use of a minimum six (6') feet high level for tree limbs, and shrubs or fence to a maximum of three (3') feet in height.

2. Interior Parking Lot Landscaping. Landscaping shall be integrated into parking areas to visually break up large expanses of paving and provide shade. All off-street parking areas, including all paved areas for off-street parking, drives, aisles, standing zones, and other vehicular use areas, shall have a minimum landscape area equal to ten percent (10%) of the paved parking area. Landscaping shall be placed at parkway entryways and at parking end islands and shall help to define vehicular access and pedestrian movement. Landscaping shall consist of a mix of grass, vegetative ground cover, shrubs, trees, and other landscaping materials. When necessary, landscaping shall be protected from vehicular encroachment by raised curbing. Landscaping shall not block sight lines. The following principles of off-street parking lot design shall be considered in developing a landscape plan. The determination of which principles apply rests with the Planning Board.
 - a) Use a variety of native tree species to provide visual interest during all four (4) seasons, where all plant materials used to landscape parking lots is to be maintained always in a living and growing condition.
 - b) Planted buffers shall be provided between parking areas and adjacent lots and streets.
 - c) Break up the blacktop and reduce stormwater runoff by using paving bricks, pavers, or textured surfaces for crosswalks.
 - d) Landscape islands shall be provided with adequate soil volume to promote healthy growth of deciduous shade trees. Adequate soil volume will vary according to the selected tree species. Soils with higher water tables may require sub-surface drainage.
 - e) Reduce visual impacts by breaking up large parking lots into smaller parking areas with a significant number of shade and evergreen trees planted in islands. Landscape islands shall be installed at both ends of each unbroken row of parking with twelve (12) or more adjacent parking spaces.
 - f) Parking lot layout shall consider pedestrian circulation. The Planning Board shall require, when appropriate, pedestrian amenities such as walkways, crosswalks, benches, shade, human scale lighting, and bicycle racks.
 - g) Appropriate areas for snow storage shall be integrated into the landscape and stormwater management plans.
 - h) The required landscaping for parking lots shall be evenly distributed throughout the parking lot, although adjustments may be approved by the Planning Board reviewing the landscape plan.

J. Lighting in Parking Lots.

Lighting in parking lots shall adhere to standards in Section 7.2, Outdoor Lighting. Lighting shall be arranged so that the source of light is concealed from public view and from adjacent residential properties and does not interfere with traffic by way of glare. All lights shall be shielded or so directed so as not to cause glare on adjoining residential properties and shall be so directed so as not to cause a traffic hazard due to glare or color.

J. Handicapped Parking.

Adequate parking for handicapped person shall be provided on accordance with applicable laws and designed in accordance with all State and Federal ADA regulations (ICC/ANSI A117.1).

K. Parking Lot Design.

1. No more than one (1) curb cut shall be created for access into a parking lot.
2. Curbing maybe required to assure proper drainage, delineate the parking area and driveway access.
3. Parking lots are encouraged to be designed with pervious pavement, especially in flood-prone areas. Low impact stormwater methods such as bioswales and rain gardens shall be required to control runoff.



✓ *Planted Median with Pedestrian Walkway Providing Direct, Convenient & Pleasant Pathways Within Parking Areas. Adequate Perimeter and Internal Parking Lot Landscaping utilized to buffer the parking lot and break up expansive pavement area.*



X *No Parking Aisle Separation and Uninterrupted Rows of Parking Without Landscaping*

L. Park and Ride Lots.

- A. Park & Ride lots in the Town of Middleburgh are for **commuter and carpool parking only**. They are not for residential, commercial, or long-term parking or for recreational use. Parking for other purposes is prohibited and may result in the vehicle being towed at the owner's expense.
- B. All Park and Ride lots in the Town of Middleburgh shall comply with the following requirements:
 - 1. Use Park and Ride lots at your own risk.
 - 2. No camping, soliciting, littering or loitering is allowed in Park and Ride lots in the Town of Middleburgh.
 - 3. No long-term parking, unless there is an emergency. Lengthy stays defeat the purpose of commuter park and ride lots.
 - 4. Park and Ride lots in the Town of Middleburgh are intended for normal daily commuting by the traveling public. The following activities are expressly prohibited by law.
 - a) Parking of semi-trucks, semi-trailers, or other commercial vehicles.
 - b) Sale or distribution of goods or services, including food.
 - c) Cooking, overnight camping or establishment of temporary or permanent residence in any designated commuter parking facility.
 - 5. Drivers utilizing the Town of Middleburgh Park and Ride Lots shall adhere to the NYS Environmental Conservation Law, 6 NYCRR, Subpart 217-3, which prohibits heavy duty vehicles, including non-diesel and diesel trucks and buses with a gross vehicle weight rating of more than 8,500 pounds, from idling for more than five minutes at a time.
 - 6. Park and Rides in the Town of Middleburgh shall be buffered through landscaping, if located next to a residential property.
 - 7. Any lighting used to illuminate any Park and Ride in the Town of Middleburgh shall be so arranged as to reflect the light away from adjoining premises.
 - 8. Any person, motor vehicle or instrument at a Town of Middleburgh Park and Ride that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed is prohibited.
 - 9. The Town of Middleburgh is not responsible for any stolen or damaged property.
 - 10. No vehicles shall block entrances, exits, or other vehicles.
 - 11. Vehicles will be towed at owner's expense if rules are violated.

7.5 Utilities.

A. Applicability and Purpose.

Utilities and Utility structures such as vaults, transformer pads, and utility poles negatively impact residential and rural character. This Section applies to new commercial and community uses, when a

change of use occurs (see definition), and multi-family dwellings. This also applies to utility working in rights-of-way along any State, County, or Town roads.

B. Criteria.

1. All new utilities, exclusive of transformers, should be placed underground at the time of initial construction, unless it is determined by the Planning Board upon recommendation of the Code Enforcement Officer that underground installation is unfeasible. Required utilities may include water, sewer, storm drainage, telephone, cable, electricity, gas, and wiring for street lights. Vaults and transformer pads shall be located to minimize visual intrusion on public space. Site Plan procedures shall include review of utility plans and location.
2. As part of this review, the Planning Board shall ensure that trees are maintained where possible and if not, replaced.
3. Reasonable provision shall be made for extension of utilities to adjoining properties, including installation of water gates and manholes if necessary, and the granting and recording of easements as required.

7.6 Fences, Hedges, and Walls.

The following standards shall apply to fences, walls, and hedges, unless otherwise authorized in this Zoning Law, for all uses in all Districts except agriculture, which shall be exempt.

A. Location.

1. Fences, freestanding walls, and hedges and all supporting structures shall be entirely on the property of the party erecting the fence.
2. Any fence, hedges or walls erected along a lot line shall be erected wholly on the property of the owner and neither the fence, hedges, or wall itself or any supporting accessory components thereof shall encroach upon the adjoining property.
3. No fences and freestanding walls shall cause obstruction of vision at street intersections.

B. Height.

1. No fence or freestanding wall shall exceed four (4') feet in any front yard.
2. No fence or freestanding wall shall exceed eight (8') feet in any side or rear yard.
3. A maximum of ten (10') feet in height shall be allowed to enclose a private or public tennis court, basketball, or sports courts provided that the fence is not more than sixty percent (60%) opaque, and provided the fence is set back at least ten (10') feet from the property line.

C. Materials and Construction.

1. All fences and freestanding walls shall be so installed so that the finished side shall face outward; all bracing shall be on the inside of the fence.

2. All fences shall utilize decorative screening, textures, design, or landscaping to minimize the blank appearance of fences and ensure comparability with existing structures.
3. Barbed wire, chicken wire, pallets, plywood and construction fencing shall not be used as fencing material or as any part of a fence visible from the public right-of-way, except when used for agricultural uses.
4. Retaining walls visible from the public right-of-way shall be faced with masonry or other decorative screening, textures, design, or landscaping to minimize the blank appearance of walls and ensure comparability with existing structures.
5. All fences, walls, and hedges shall be maintained and, when necessary, repaired or replaced.



✓ *Fence and Columns with Decorative Caps*



X *Fence with No Visual Breaks*

7.7 Signs.

A. Purpose.

By encouraging the orderly and appropriate design, scale, and placement of Signs, the provisions of this Section are intended to:

1. Protect public safety;
2. Promote effective identification, communication, and wayfinding; and
3. Maintain and enhance the attractive visual environment that fosters a healthy economy.

B. Sign Permits.

1. Permit Required. Before the alteration, construction, or installation of any Sign, except Prohibited Signs and Signs exempted from requiring a permit pursuant to this Section, a permit shall be secured from the Code Enforcement Officer or Planning Board as specified below.
 - a) Planning Board. Approval by the Planning Board shall be required as follows. Sign(s) associated with a proposed project for which an application is pending before the Planning Board pursuant to this Law, including, but not limited to Site Plan Review, Special Use, and Subdivision approvals shall require issuance of a Sign Permit by the Planning Board.
 - b) Code Enforcement Officer. If no Site Plan Review is required, Signs shall be permitted and approved prior to the issuance of building permits. The Code Enforcement Officer shall issue the Sign Permit when the Sign is found to be in compliance with this Section.
 - c) Approval of a Sign Permit may be subject to conditions necessary to reduce any adverse impacts of a Sign on neighboring residential properties. Such conditions may be, but are not limited to, the size, location, lighting, color, or means of structural support.
 - d) Approved Sign permits shall become null and void after six (6) months if such Signs have not been completely and lawfully installed as permitted.

C. Sign Application.

Each Sign Application shall consist of the following:

1. The name, address, and telephone number of the Applicant, owner of the real property on which the Sign will be located, owner of the Sign, and contractor(s) who will build, install, and maintain the Sign.
2. A drawing in appropriate scale to show the design, dimensions, and color of the graphics, wording, and Sign structure, details of any illumination source and placement of the Sign relative to the building or structure on which it is located and relative to nearby buildings, structures, street lines, property lines, and sight lines.
3. If the property is not owner occupied, written consent by the owner of the real property on which the Sign will be located is required.
4. Fee. Permit fees are set at the discretion of and by the Town Board.
5. Upon completion or placement of the Sign, the Code Enforcement Officer shall take a photograph of the Sign and place it in the file.
6. A completed application shall be approved or denied by the Code Enforcement Officer and/or Planning Board, in writing.

D. Standards. All Signs in all land use areas shall conform to the following general requirements:

1. General Requirements.

- a) No Sign shall be internally illuminated or contain flashing, intermittent, rotating, or moving light(s). Current time, temperature, or gasoline prices internally illuminated Signs are allowed in the Commercial (C) Zoning District only and Electronic Display Signs are allowed, provided they meet the standards in this Law and Section D 1 (s) for Electronic Display Sign Standards. Holiday related decorations or displays are specifically excluded from this restriction and seasonal lights are specifically excluded from this restriction.
- b) No Luminous Sign, Indirectly Illuminated Sign or lighting device shall be placed or directed to cause beams of light to be cast on any public highway, sidewalk or adjacent premises or to cause glare or reflection that will be a traffic hazard or nuisance.
- c) No pennants, ribbons, streamers, spinners, or other similar moving, fluttering or revolving devices are allowed (except for traditional barber poles and Feather Banners). No Sign may rotate or move (except those that swing in the wind). Flags and flags depicting “open” or “closed” status of the business are allowed.
- d) Except as provided, neon-type lighted Signs and portable Signs mounted on wheels are not allowed. Non-flashing neon signs are allowed only in windows in Commercial (C) Zoning District only, provided they are inside the building, shall be extinguished when the associated business is closed, and where their colors harmonize with the building’s exterior colors.
- e) Freestanding Ground-Mounted (Non-Pole) Signs (Monument Signs) or Freestanding, Two-Pole Signs shall be setback at least ten (10’) feet from any property line and twenty (20’) feet from a street line so as not to impede the line of sight for egress from a lot.
- f) Signs parallel to and attached to a building shall not be set away from the building more than eight (8) inches.
- g) No Projecting Sign shall extend into a public way or be less than eight (8’) feet above a pedestrian way. No Projecting Sign should extend to a height above the maximum building height allowed.
- h) Signs shall not be mounted on roofs or extended above the roof line (unless they are mounted on the face parapet wall which extend above the roof line, in which case it cannot extend above the top of the parapet.)
- i) No Sign, except for traffic, regulatory, or informational Sign, shall use the words “stop”, “caution” or “danger” or should give a red, amber, or green lights resembling a traffic signal, or shall not resemble “stop” or “yield” Signs.
- j) Any Sign not in use shall be removed within thirty (30) days after cessation of business.
- k) Signs must be constructed of durable materials, maintained in good condition, and not allowed to become dilapidated.

- l) All Billboards and Freestanding Single-Pole Signs are prohibited, as defined in this Law.
- m) All Off-Premise Signs are prohibited, except that up to two (2), Off-Premise Signs per business that advertise a business name and nature of the business are allowed, if they are equal to or less than six (6) square feet each, except for Farm Signs described in Section H (14), below. Off-Premise Signs shall not be illuminated.
- n) Temporary Signs and Banners. Political Signs are considered Temporary Signs. All Temporary Signs must be removed within seven (7) days after an election or the event advertised and may be erected or placed not more than sixty (60) days prior to the event. Banners advertising an event or activity are considered Temporary Signs and are permitted as such. Banners advertising product for sale are also considered Temporary Signs and must be removed within seven (7) days of sale.
- o) Portable Signs. A new business or a business in a new location, awaiting installation of a Permanent Sign, or seasonal Temporary Farm Stand may use a Portable Sign for a period of not more than ninety (90) days or until installation of a Permanent Sign, whichever occurs first. Such a Portable Sign must meet all the requirements of this Law. A permit for such Portable Sign is required.
- p) Businesses located in a corner building are permitted to have one (1) additional Sign for each street frontage.
- q) Businesses with service entrances may identify such entrances with one (1) Sign that does not exceed two (2) square feet.
- r) Sandwich Board Signs. In addition to other Signs, one (1) Sandwich Board Sign per business is allowed. The Sandwich Board Sign shall not exceed twelve (12) square feet and must be located within four (4') feet of the main entrance to the business. The Signs shall not interfere with pedestrian circulation and must be removed at the end of the day.
- s) Use of Motor Vehicle Signs. Trucks and other motor vehicles used as a normal part of everyday business for delivery and transportation of merchandise or services or for advertisement for a seasonal Farm Stand shall not be considered a Sign. Trucks and other motor vehicles that are not used in deliveries or transportation and which are parked on a lot or on the street shall be considered a Sign and subject to all requirements of this Section. The truck or motor vehicle shall be considered an Off-Premise Sign if it is not parked on a parcel of land where the principal use is located and shall meet all requirements of this Section 7.7.
- t) Electronic Display Signs.
 - 1) Electronic Display Signs are prohibited in all Zoning Districts except for the following uses:
 - a) Allowed only in the Commercial (C) Zoning District in the Town of Middleburgh for Gasoline Stations only and exclusively for gas prices, time, and temperature only.
 - b) Allowable at the following public uses, regardless of Zoning District:
 - i. Schools.

- ii. Town Hall
- iii. Firehouse
- iv. Libraries

- 2) The message displayed on the Electronic Display Sign for public uses described above shall be static and nonanimated and shall remain fixed for a minimum of ten (10) seconds. The minimum display duration shall be calculated based on the length of time it takes a car to pass the Sign starting when the Sign first becomes visible. The formula of duration equals visibility distance (ft) divided by the speed limit (ft/second) shall be used for this calculation.
- 3) Electronic Display Signs shall contain a static message only during the fixed display period, and shall not have movement, or the appearance or the illusion of movement, of any part of the Sign structure, design, or pictorial segment of the Sign including the movement or any appearance of movement of any illumination or flashing, scintillating, or varying of light intensity.
- 4) The transition time between changes in the Sign face or message shall be less than one (1) second. Any change of message shall be completed immediately without pauses and all parts of the message shall change simultaneously.
- 5) The digital LED display shall not have lighting that would compete with or distract from traffic signal lighting.
- 6) The size of the Electronic Display Sign message area shall not exceed fifty percent (50%) of the total Sign surface area.
- 7) No Electronic Display Sign shall be of such intensity or brilliance as to impair the vision of the motor vehicle driver or to otherwise interfere with the driver's operation of a motor vehicle.
- 8) All Electronic Display Signs shall contain a default mechanism that will cause the Sign to revert immediately to a black screen if the Sign malfunctions.
- 9) No Electronic Display Sign shall include any audio message.
- 10) One (1) Electronic Display Sign is permitted per site.
- 11) A minimum distance of four hundred (400) feet shall be required between an Electronic Display Sign and another Electronic Display Sign.
- 12) Electronic Display Signs are not permitted as wall, window, or projecting Signs.
- 13) All copy, characters or other changeable images shall be one (1) color only with light copy on dark background.
- 14) Electronic Display Signs shall utilize automatic dimming technology, as certified by the manufacturer, to adjust the brightness of the sign relative to ambient light so that not time shall a Sign exceed a brightness level of 0.2 foot-candle above ambient light measured at the nearest property line.

15) Electronic Display Signs shall be turned off between the hours of 11PM and 6AM, unless the Sign is associated with a facility that is open to the public, in which case the Sign may stay illuminated until the facility is closed.

16) To assure that light emanating from any Electronic Display Sign does not adversely affect neighboring properties or visually interfere with motorists, pedestrians, and neighboring property owners, the Code Enforcement Officer shall have the authority to require changes to any Electronic Display device that, in the opinion of the Code Enforcement Officer, is malfunctioning or operated in a manner that causes or creates excessive glare or intensity of light, visual interference or blind spots. Such changes may include, but are not limited to, requiring that the Electronic Display Sign be turned off, or requiring the installation of lower wattage bulbs or requiring that the Sign be fitted with shields to deflect light, or such other changes as may be required to eliminate the offending condition. Failure to implement the changes as directed by the Code Enforcement Officer shall be a violation of this Section, and of any permit or approval granted under this Section.

- u) No Sign may be attached to, placed upon, or painted upon utility poles, street signs, fences, other Signs and sign posts, trees (except Posted Signs), or other natural features.
- v) Signs painted, in whole or in part, fluorescent or “day glow” colors are prohibited.
- w) Signs that emit smoke, vapor or particles, sounds or colors are prohibited.
- x) Signs incorporating projected images. This prohibition does not apply to seasonal messages.
- y) Any Sign placed in such a position that will cause danger to the public safety, including but not limited to obstructing doors, windows, or fire escapes are prohibited.
- z) Any other Sign not specifically listed in this Zoning Law are prohibited.

E. Dimensional Standards for Signs in the Town of Middleburgh.

1. Permitted Signs must follow size standards listed in Table 3.
2. One (1) Freestanding Non-Pole Sign or Freestanding Two-Pole Sign per parcel is allowed. Each business located within the parcel may have one (1) additional Sign that is building mounted only.

F. Schedule of Signs.

The following Table 3, Schedule of Signs, is not intended to replace all the requirements of Section 7.7, Signs.

Table 3
Schedule of Signs

NA- Sign Not Allowed

P- Permitted

Sign Type	Zoning Districts	
	R1, R2, R3	C, CLI, PDD
Freestanding, Single Pole	NA	NA
Freestanding, Non-Pole and Two-Pole	P	P
Height (max height in feet)	10	10
Area (max square feet)	20	20
Awning Sign, Ground Floor Uses Only	NA	P
Height Above Sidewalk (min in feet)	NA	8
Blade/Projecting Sign	P	P
Above Grade Clearance, Minimum in Feet	8 Above Sidewalk 13 Above Driveway	8 Above Sidewalk 13 Above Driveway
Area (Each Face), Maximum Square Feet	10	10
*Wall or Building Sign	P	P
Size (max square feet)	32	32
Total Number of Signs Allowed Per Premise	2(one (1) Freestanding, Non-Pole or Two Pole Freestanding Sign and one (1) Building Mounted per premise)	2 (one (1) Freestanding, Non-Pole or Two Pole Freestanding Sign and one (1) Building Mounted per premise)

* Notes: (1). For this purpose, adjoining parcels of land under the same ownership shall be considered one (1) commercial premise. Individual buildings or businesses located on one (1) premise are allowed one (1) Wall or Building Sign per business.

(2) Wall Signs are allowed and shall have a total area not exceeding ten percent (10%) of the wall area to which it is attached, whichever is less. Where a lot fronts on more than one (1) street, the aggregate Sign Area facing each street frontage shall be calculated separately. Where two (2) or more Wall Signs are affixed to one (1) wall, the gross display area shall be the total area of all Signs.

G. Design Guidelines for Signs.

1. Signs shall be architecturally compatible with the style, composition, materials, colors, and details of the building.

2. Signs shall be professionally constructed using only high-quality materials, including but not limited to, painted metal, stone, hardwood, and brass-plated are the preferred materials for Signs. Flat Signs should be framed with raised edges.
3. Sign Colors and lettering styles shall compliment the building façade and harmonize with neighboring businesses. A matte finish is recommended, to reduce glare and enhance legibility.
4. Landscaping shall be planted and maintained around the base of the Free-Standing Non-Pole Signs preferably at a surface area ratio of 1:1 or greater.



✓ *Gasoline Monument Sign*



X *Single Pole Signage with different color price lighting*



✓ *Freestanding Two-Pole Signage
Externally Illuminated*



X *Freestanding Single-Pole Signage
Internally Illuminated*

H. Exempt Signs.

The following types of Signs may be erected, maintained, and replaced on any lot in any Zoning District, unless otherwise prohibited herein, without permits or fees, provided they comply with the specific requirements of this Section and all applicable standards of this Chapter.

1. Home Occupation Signs, one (1) non-illuminated Sign per premise, not to exceed ten (10) square feet in size and a maximum height of three (3) feet shall be allowed.
2. Signs (can be Freestanding, Single Pole) associated with property for sale or rent, not exceeding six (6) square feet, and not exceeding two (2) per premise.
3. Signs erected by the Town of Middleburgh for official Town business purposes.
4. Signs erected by local, county, state, or federal departments, boards, or agencies for official business purposes.
5. Signs with an area not more than two hundred sixty (260) square inches related to public transportation stops.

6. Informational signs up to sixteen (16) square feet in size, on lands which have been conserved by easement or other permanent, protective measures or is of a historical nature.
7. Flags and Flags depicting the “open” or “closed” status of the business.
8. Temporary Signs such as garage sales, non-recurring events, political campaign, fund drive, etc. or other events undertaken by a political, religious, charitable, or educational organization, placed for no more than sixty (60) days and not to exceed twenty (20) square feet.
9. Signs which mark property boundaries, directional signs, prohibit trespassing, hunting, etc., or warn of hazards, not to exceed four (4) square feet and a maximum height of three (3) feet.
10. Signs denoting the architect, engineer, or contractor where construction or repair is in progress, not exceeding twelve (12) square feet. These signs must be removed within thirty (30) days after completion of the project.
11. Professional and trade name plates, not exceeding six (6) square feet.
12. Signs giving the name of the residents or a dwelling and its address, not exceeding four (4) square feet.
13. A bulletin board or similar sign connected with a church, museum, library, school, public or semi-public structures, between fifteen (15) to twenty (20) square feet with a maximum height of eight (8') feet above the ground level. One (1) per premise.
14. Sign identifying the name of a farm, and on-premises Signs used in conjunction with the sale of farm products, not to exceed twenty-four (24) square feet.

I. Safety.

The Code Enforcement Officer and/or the Planning Board may require the adjustment or relocation of any Sign to help ensure vehicular and pedestrian safety.

J. Nonconforming Signs.

1. Nonconforming Signs existing at the time this Zoning Law is adopted may remain in use, subject to the regulations of this Section and applicable requirement of this Zoning Law. Nonconforming Signs must be maintained in good repair and must comply with all other requirements of this ordinance.
2. Reconstruction of Damaged Signs or Sign Structures.
 - a) When a Nonconforming Sign or Sign Structure which is determined by the Code Enforcement Officer to be in a state of disrepair and/or is a threat to public health and safety, is a hazard or considered a nuisance, the owner of the Sign or the owner of the property where the Sign is located shall immediately correct all unsafe conditions to the satisfaction of the Code Enforcement Officer.

- b) Any Nonconforming Sign or Sign Structure which has been substantially damaged shall be repaired in conformance with this Section within ninety (90) days and completed within one hundred twenty (120) days of such damage.
 - c) Any Nonconforming Sign or Sign Structure which has been damaged, but not substantially damaged, may be repaired and used as before, provided all repairs are initiated within ninety (90) days and completed within one hundred twenty (120) days of such damage.
3. Modification and Relocation.
- a) Nonconforming Signs may not be increased in size or height. Change to existing Signs shall be limited to the copy.
 - b) Nonconforming Signs may not be moved on the site or relocated to another site, except in conformance with this Section.
4. Nonconforming Signs associated with a business that has ceased to operate for more than sixty (60) consecutive days shall be removed after owner of Sign or property owner receives written notice by the Town of Middleburgh Code Enforcement Officer. Any new Sign associated with a future use at the same location shall be in conformance with this Section.

K. Feather Banners.

- 1. Feather Banners authorized in this Section are in addition to the maximum allowable signage which is otherwise permitted. Feather Banners shall always be maintained in good condition, without fading, frayed or torn fabric.
- 2. Feather Banners are allowed in the Commercial Zoning Districts and are prohibited in the Residential Zoning Districts within the Town of Middleburgh.
- 3. Feather Banners shall not extend over the public right-of-way.
- 4. Minimum spacing between Feather Banners shall be eight (8') feet.
- 5. Each property is allowed a maximum of two (2) Feather Banners.
- 6. Feather Banners shall not create a traffic sight obstruction or other pedestrian or traffic hazard and shall comply with applicable engineering design standards.
- 7. Maximum height for Feather Banners shall be the lesser of fifteen (15') feet or the height of the building, whichever is smaller.

L. Sign Lighting.

- 1. The Town of Middleburgh has determined that Externally Illuminated Signs are more consistent with the character of the Town and outdoor, Internally Illuminated Signs are prohibited, except for in conformance with Section D 1 (s).

2. External Illumination Standards.

- a) External lighting fixtures that project light on a Sign from above or below are strongly encouraged.
 - b) Externally Illuminated Signs shall only use shielded light fixtures.
 - c) Light fixtures shall be simple and unobtrusive in appearance and size.
 - d) Light fixtures shall be positioned so as not to obscure the Sign's message and graphics.
 - e) Light sources shall be shielded as such that the light source is directed away from passersby.
 - f) Light sources shall be directed against the Sign such that it does not shine onto adjacent property or cause glare for motorists and pedestrians.
 - g) Bare bulbs shall not be exposed.
 - h) Awnings with signage included shall always be externally illuminated.
3. The Code Enforcement Officer and/or Planning Board may require the adjustment or relocation of any Sign lighting in order to prevent glare and to ensure vehicular and pedestrian safety. No Luminous Sign, Indirectly Illuminated Sign, or lighting device shall be placed or directed so as to cast glare or diffused beams of light upon any street, highway, sidewalk, or adjacent premises, or otherwise to cast glare or reflection that may constitute a traffic hazard or public nuisance.

7.8 Stormwater.

- A. Stormwater runoff rates after development shall not exceed rates that existed prior to the site being developed. Existing natural areas that already provide stormwater erosion control shall be protected to the maximum extent practical.
- B. Erosion and stormwater control management practices shall be designed and constructed in accordance with the Stormwater Design Manual of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES), and with the requirements of the Environmental Protection Agency's Phase II National Pollutant Discharge Elimination System (NPDES) regulations.
- C. All non-residential land disturbances of one (1) acre or larger and applicable residential developments that disturb one (1) to five (5) or more acres of land shall conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities (GP-0-10-001), or as amended or revised.
- D. The Planning Board may require stormwater treatment to be designed through low-impact stormwater management practices. Bioretention (bioswales), dry wells, filter, and buffer strips, grass swales, rain gardens, and infiltration trenches should be installed to infiltrate runoff from parking lots and other impervious surfaces to the maximum extent practical. Where vegetative solutions are not feasible, the Planning Board shall include porous surfaces to allow infiltration of stormwater to the maximum extent practical.

7.9 Wetlands and Streams.

- A.** Applicants for Building Permits that affect areas regulated by the Federal Army Corps of Engineers or the New York State Department of Environmental Conservation (NYSDEC) as freshwater wetland shall comply with the current applicable laws of the State and Federal Government. Freshwater wetland boundaries shall be flagged on the site and verified by the DEC and/or the Army Corps of Engineers. The regulated wetland boundary and protective buffer shall be indicated in Site Plans and Subdivisions for properties with such wetlands. There shall be no construction or disturbance within a federally regulated or NYS DEC regulated wetland or buffer without an Army Corps of Engineers or NYS DEC permit. The Planning Board may require buffering berms, filter strips, and vegetated buffers between new development and wetlands.
- B.** No alteration to watercourses, whether by excavation, filling, grading, clearing, draining, or otherwise shall be made that affects the water levels or flow of such watercourses without review as to the effect of such alteration and any related facilities on water recharge areas, water table levels, water pollution, aquatic animal and plant life, temperature change, drainage, flooding, runoff and erosion. This review and approval of such alteration shall be made by the Planning Board in consultation with the Soil Conservation Service and the NYS DEC. Where the applicant must obtain a stream disturbance or discharge permit from NYS DEC, Planning Board approval shall be conditional on the NYS DEC's permit approval.

7.10 Energy Efficient Practices.

Energy Efficient, Energy Star, and LEED energy standards are encouraged for all new commercial, multi-family, and community facilities.

7.11 Steep Slopes.

The Town finds that the alteration of steep slope areas poses potential risks of erosion, sedimentation, landslides, and the degradation of scenic views. Accordingly, the following requirements are hereby imposed in areas with slopes exceeding fifteen percent (15%).

- A.** For any Subdivision, Special Permit, Site Plan, Building Permit, Zoning Permit, or Variance that involves the disturbance of slopes greater than fifteen percent (15%), conditions shall be attached to ensure that:
 - 1. Adequate erosion control and drainage measures will be in place so that erosion and sedimentation do not occur during or after construction.
 - 2. Cutting of trees, shrubs, and other natural vegetation will be minimized, except in conjunction with logging operations performed pursuant to applicable guidelines of the New York State Department of Environmental Conservation.
 - 3. Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding, or avalanches.
 - 4. Proper engineering review of plans and construction activities will be conducted by the Town to ensure compliance with this Section, paid for by escrow deposits paid by the applicant.

5. No Certificate of Occupancy will be granted until all erosion control and drainage measures required pursuant to this Section have been satisfactorily completed.
6. Slope determinations shall be made based upon the topographic information required for an approval, along with such other topographic information as a reviewing board or official shall reasonably require or the applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the Town, at the applicant's expense, shall determine the location of regulated slopes.
7. For purposes of determining the location of steep slope areas, only contiguous slopes containing at least two-thousand (2,000) square feet of steep slopes with at least ten (10) feet of continuous horizontal width perpendicular to the slope shall be considered.

7.12 Clear Cutting.

- A. No clear-cutting shall be permitted within one hundred (100) feet from any stream, pond, or wetland.
- B. No clear-cutting shall be permitted on land where slopes are fifteen (15%) percent or greater.
- C. No clear-cutting shall be permitted within fifty (50) feet of any lot line.
- D. No clear-cutting which affects one (1) or more acres of ground surface within any lot or any contiguous area shall not be permitted until an erosion or sedimentation control plan has been approved by the reviewing board.
- E. The restrictions on clear cutting do not apply to agricultural operations or uses.

Article VIII

SUPPLEMENTAL REGULATIONS FOR SPECIFIC USES

In addition to Article VII (Supplementary Regulations), Article X (Special Use) and Article IX (Site Plan), and other requirements of this Law, these development standards are applicable in all Districts wherever such uses are located and shall be met for the following specific uses:

8.1 Performance Standards for Certain Agricultural Uses.

A. Applicability and Purpose.

The policy of the Town is to protect agricultural land and agricultural operations so that these businesses can continue in a profitable and efficient manner. The following Performance Standards are designed to protect existing farms, especially in Agricultural Districts, from new uses that may conflict with farm operations, and to ensure that new land uses in and around farms, especially in Agricultural Districts, are informed about adjacent farm operations and potential impacts. These standards are applicable to intensive agricultural uses outside Agricultural Districts and for Subdivision and new land uses located within Agricultural Districts, as noted below.

B. Standards.

1. *Intensive Agricultural Uses Outside Agricultural Districts.* Any agricultural operation that meets the Concentrated Feeding Operation (CAFO) standards and definitions must buffer their operation from adjacent uses that are unrelated to the agricultural operation. Buffers may be setbacks or use of vegetative screening.
2. *Buffering Agricultural Uses from New Land Uses Within Agricultural Districts.* Proliferation of rural residences or new commercial uses can lead to increased conflicts over agricultural operations. By separating incompatible uses, a buffer minimizes the impacts of development on surrounding agricultural operations and decreases the likelihood of conflict. A buffer will be required between farmland located within a State Agricultural District and any new residential, commercial, or industrial development. The applicant for a new land use has the responsibility to provide for this buffer. Each new residence must be placed at least two hundred (200') feet away from the boundary between it and the agricultural parcel. The buffer shall not be established in a way that impedes the farm operations.
3. *Subdivision in Agricultural Districts.* Insofar as practicable, new dwellings in any Subdivision shall be sited with flexible setbacks to ensure maximization of open lands and agriculture. The buildings should be located and constructed to disturb the least amount of prime or important soils as possible. The Planning Board may require applicants for Subdivisions to submit a Conservation Subdivision Development Plan (See Article XVI of this Law).
4. *Agricultural Data Statement.* An Agricultural Data Statement is required to help local planning agencies recognize the policies and goals of the State Law and the Town of Middleburgh Comprehensive Plan and to avoid unreasonable restrictions or regulations on farm operations. All applications for Special Use, Site Plan approvals, Use Variances, or Subdivision approvals require an Agricultural Data Statement if they occur on property containing a farm operation or on a property within an Agricultural District. The applicant has the responsibility to prepare the Agricultural Data Statement.

- a) Contents of Data Statement and Required Notice to Landowners. The Agricultural Data Statement must include the name and address of the applicant, a description of the proposed project and its location, the name and address of the landowners within five hundred (500) feet of the boundary of the proposed project property and a map showing the project's site relative to the farm operations identified. The Planning Board must notify the owners of the land identified to allow farmland owners to comment on the effect of any proposed changes on their farm operations.
 - b) Evaluation of Impacts. The Planning Board is required to evaluate the possible impacts of the proposed project so that the policy and purposes of the Comprehensive Plan, and the State Agricultural Districts Law are upheld. State Law requires that the Planning Board notify the Schoharie County Planning Commission about any proposal requiring Agricultural Data Statements.
5. *Required Disclosure Notice of Lands Within Agricultural Districts or Within Five Hundred (500') feet of Existing Agricultural Operations.* Any landowners who sell or transfer property located in a State Agricultural District or within five hundred (500') feet of an existing agricultural operation are required to provide a disclosure notice to perspective buyers or transferees stating: *"It is the policy of this State and this Town to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This notice is to inform prospective residents or new land users that the property they are about to acquire lies partially or wholly within an agricultural district, or adjacent to an existing agricultural operation, and that farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust, and odors, the operation of machinery, and the storage and disposal of manure. Owners, occupant, and users of this property should be prepared to accept such inconveniences and discomfort. Prospective purchases are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under Article 25-AA of the Agriculture and Markets Law."* Receipt of the disclosure statement must be recorded on a property transfer report prescribed by the Office of Real Property Tax Services.
 6. *Right to Farm.* In accordance with the Town of Middleburgh Right to Farm Law, this Law shall not be interpreted, administered, or enforced in a manner that unreasonably restricts agricultural structures or normal practices occurring on lands that are within an Agricultural District, unless such restrictions are necessary for the protection of public health and safety.
 7. *Avoidance of Building on Prime or Unique Soils.* In reviewing any Subdivision, Site Plan or Special Use Permit application, the Planning Board or Zoning Board of Appeals shall require that structures (except farm structures) and impermeable surfaces to be located, insofar as practicable, on those portions of a tract of lands where they will have the least negative impact on agricultural soils potential and agricultural operations. Examples where not practicable include areas of steep slopes, wetness, or areas with difficult lot configurations or road access problems.
 8. *Multiple Farm Businesses on Farm.* Agricultural operations located within a certified New York State Agricultural District shall be allowed to have multiple farm-related businesses including but not limited to processing and direct sales on the premises provided all such businesses are related to the primary agricultural operation. All farm-related businesses shall meet all other requirements of this zoning law.

8.2 Accessory Apartments.

It is the purpose and intent of this Section to allow the establishment of one (1) Accessory Apartment located entirely within a single-family dwelling in order to provide an opportunity for the development of small rental housing units designed to meet the special housing needs of senior citizens, young adults, single persons and small households; to ensure the retention of single-family neighborhood character; allow the more efficient use of the Town's housing stock with minimal impact on community character and resources; and provide economic support for existing resident families. Consistent with the intent of this Section, any owner occupying a single-family dwelling may apply to the Planning Board for Site Plan Approval for an Accessory Apartment permit to seek the establishment of one (1) Accessory Apartment. The application and procedure for Site Plan Approval shall be in accordance with Article IX, Site Plan Review, of this Zoning Law. The Planning Board shall review such application, which requires a public hearing, and shall strictly apply the following standards.

Any application for an Accessory Apartment shall require submission of a plan showing the proposed Accessory Apartment and parcel survey. The Planning Board is not granted the authority to waive any of the standards set forth below, unless such authority is specifically provided for herein.

A. An Accessory Apartment is in Single-Family Dwellings.

1. **Accessory to the Single-Family Detached Dwelling.** Subject to the review and approvals set forth herein, an Accessory Apartment is allowed in any Zoning District that permits a single-family detached dwelling as a permitted use subject to Site Plan Review and approval from the Planning Board.
2. **Compliance with District Regulations.** The lot on which the Accessory Apartment is to be located shall meet all bulk requirements applicable to a single-family detached dwelling as set forth in the schedule of district regulations for the Zoning District in which it is located.
3. **Dwelling Size.** The minimum habitable floor area for an Accessory Apartment shall be four hundred-fifty (450) square feet, but in no case shall such Accessory Apartment exceed thirty (30%) of the gross floor area of the single-family detached dwelling in which it is located or seven hundred fifty (750) square feet of gross floor area, whichever is less. Any building which proposes an Accessory Apartment that exceeds the maximum habitable floor area requirement shall be deemed a two-family dwelling. The applicant shall submit a floor plan to scale of the single-family detached dwelling that illustrates the interior space within which the Accessory Apartment will be created.
4. **Existing Single-Family Detached Dwelling.** The principal single-family detached dwelling shall have been lawfully constructed and used as a single-family detached dwelling for at least ten (10) years prior to the date that an application is made for the creation of an Accessory Apartment. Evidence of such use shall include the date of a duly issued Certificate of Occupancy for the single-family detached dwelling or other evidence of use that the Planning Board finds adequate to establish that the single-family detached dwelling has been lawfully established and maintained for at least ten (10) years. The Planning Board may waive the ten-year requirement upon an evidentiary showing by the applicant establishing that the Accessory Apartment will enable the owner occupying the principal dwelling to provide care for an elderly or disabled relative residing in the accessory apartment.
5. **Owner Occupancy Required.** The principal single-family detached dwelling wherein the Accessory Apartment is to be located must always be occupied at the time of application and thereafter while the Accessory Apartment is established and maintained as the principal domicile of the record owner of title. Ownership shall be evidenced by the last deed recorded in the office of the Clerk of the County

of Schoharie. Evidence that the dwelling is occupied as the principal domicile of the record owner may be established by an affidavit of the record owner, supported by voting records or such competent evidence as would be enough to establish domicile for purposes of voting. It shall be a condition of every Certificate of Occupancy issued for an Accessory Apartment that occupancy of such dwelling unit is valid only if the unit is located in an owner-occupied single-family dwelling, and the Certificate of Occupancy shall prominently display in bold print a statement that occupancy of such Accessory Apartment is not lawful and valid unless the single-family dwelling is owner-occupied. In the event a Certificate of Occupancy is issued without such statement, it shall not prevent enforcement of the condition. Nothing herein shall permit the establishment of separate ownership, e.g., condominium, of either dwelling unit.

6. **Maximum Number of Accessory Apartments.** There shall be no more than one (1) Accessory Apartment in any single-family detached dwelling on any one (1) property. An Accessory Apartment is not permitted on any lot where two (2) dwelling units already exist, regardless of whether one (1) is a prior nonconforming dwelling unit or not.
7. **Maximum Number of Occupants.** The maximum occupancy of the Accessory Apartment is three (3) persons.
8. The Accessory Apartment shall comply with all applicable requirements of the New York State Uniform Fire Prevention and Building Code and shall be maintained in a neat and orderly manner.
9. Off-street parking shall be provided on the following basis: two (2) off-street parking spaces per unit. The parking spaces shall be provided with a backup or turnaround area so that cars which park in the parking spaces are not required to back out into the street. This requirement may be waived by the Planning Board during the Site Plan approval process, so long as the public street or roadway is not classified as a state or county highway. The backup or turnaround area shall not be construed as nor used as a legal parking space.
10. No use shall be permitted accessory to an Accessory Apartment.
11. Each dwelling unit in the structure shall contain its own separate and independent bathroom and kitchen entirely located within each dwelling unit. The Accessory Apartment shall contain no more than one (1) bedroom and no other space shall, in the determination of the Planning Board, be so configured that it could be used as a second bedroom (e.g., a den, a sewing room, etc.).
12. No exterior changes or expansion which may alter its existing foundation, existing roofline, or existing facade, may be made to the principal single-family detached dwelling except for the installation of an entrance to serve the Accessory Apartment. The structure in which the Accessory Apartment is located shall have only one (1) front entrance and only one (1) entrance from any other facade of the structure. An exterior entrance leading to a foyer with interior entrances leading from the foyer to the dwelling units will be acceptable pursuant to this requirement.
13. The Accessory Apartment may be serviced by either an on-site septic system or central sewage facility, by a private well or central water facility. Adequate water supply and sewage disposal facilities shall be available as certified by a New York State licensed professional engineer, except such certification is not required if the building is connected to public water and sewer services. The adequacy of the water and sewer facilities must be demonstrated to the satisfaction of the Planning Board for the Town during Accessory Apartment permit review.

14. Conditions of Approval.

- a) In addition to the above standards, the Planning Board shall grant such application and issue the required Accessory Apartment permit only after determining that the issuance of such Accessory Apartment permit will not adversely affect adjoining properties and the general surrounding neighborhood where the Accessory Apartment is proposed to be located. If the Planning Board determines a proposed Accessory Apartment may adversely affect adjoining properties or the surrounding neighborhood, it may, as a condition of approving a permit, require that the applicant establishes and maintains landscaping or fencing or other mitigation measures, where necessary, to avoid such adverse effects.
- b) It shall be a condition of the Accessory Apartment permit, whether specifically incorporated therein, that:
 - 1) The owner shall maintain the Accessory Apartment use in conformance with the requirements of this Section, this Law, and all applicable provisions of the Uniform Fire Prevention and Building Code, including, but not limited to, the Property Maintenance Code of New York State; and
 - 2) The Accessory Apartment permit shall be valid for a period of one (1) year from the date that a Certificate of Occupancy is issued for the Accessory Apartment, and that it shall be automatically renewed annually by the Code Enforcement Officer upon submission by the record owner of an annual certification for renewal to be provided by the Town, attesting that the principal single-family dwelling is maintained as the owner's domicile, and payment of a renewal fee in such amount as established by resolution of the Town Board, provided the Code Enforcement Officer, after an inspection, if necessary, determines such use has been maintained in accordance with all requirements herein and any applicable conditions of approval.
- c) If the Code Enforcement Officer determines at any time prior to renewal that the use has not been maintained in accordance with the requirements herein or any applicable conditions of approval, the Code Enforcement Officer shall give notice of such determination to the record owner and the Planning Board shall approve, disapprove, or approve with conditions the Accessory Apartment permit subject to renewal. The Planning Board shall consider the Code Enforcement Officer's findings in evaluating whether to renew the Accessory Apartment permit; and if it determines that it intends to deny such renewal or to impose additional conditions on such renewal, the Planning Board shall give written notice of its intent to the record owner at the most recent address shown on the tax roll of the Town and provide an opportunity for the record owner to be heard on the matter, and shall consider any evidence submitted by the record owner in support of the renewal of the Accessory Apartment permit. The Planning Board shall thereafter approve, approve with conditions or deny the Accessory Apartment permit, stating the reasons for its decision.
- d) **Transfer of Title.** Within sixty (60) days after the record owner transfers title to premises for which an Accessory Apartment permit has been granted for an Accessory Apartment, the new record owner shall provide such evidence to the Code Enforcement Officer as may be necessary to demonstrate that the principal residential structure is occupied by the new record owner in accordance Section A (5), above. If the new record owner fails to do so, the Code Enforcement Officer shall serve a written notice upon the owner or occupant to do so by a date certain. In the event that the record owner fails to do so, the Code Enforcement Officer shall give notice of such noncompliance to the record owner and the Planning Board, and the Planning Board shall consider the Code Enforcement's findings in considering whether to renew the Accessory Apartment permit; and if it determines that it intends to

deny such renewal or to impose additional conditions on such renewal, the Planning Board shall give written notice of its intention to the record owner at the most recent address shown on the tax roll of the Town and provide an opportunity for the record owner to be heard on the matter, and shall consider any evidence submitted by the record owner in support of the renewal of the Accessory Apartment permit. The failure of the Planning Board to take any action required by this Section shall not constitute a waiver of such requirement. The Planning Board shall thereafter approve, approve with conditions or deny the Accessory Apartment permit, stating the reasons for its decision.

- e) **Effect of Denial of Renewal.** The Planning Board shall direct that the Accessory Apartment created pursuant to this Section be vacated, its use as an Accessory Apartment created pursuant to this Section be discontinued, and that all improvements installed to allow its use as an Accessory Apartment be removed.
- 15. **Inspections.** The applicant shall agree and acknowledge, in writing, to the Town of Middleburgh the understanding that, should the parcel be sold, the Code Enforcement Officer is authorized to conduct a site visit to verify that the Accessory Apartment is in compliance with the conditions of the Accessory Apartment permit issued for the property. The Code Enforcement Officer, or a duly authorized designee of the Code Enforcement Officer, may perform a fire, safety and property maintenance inspection of the Accessory Apartment upon the request of the owner of the property to be inspected or an authorized agent of such owner, or the occupant. In the event that the Code Enforcement Officer has a reasonable basis to believe that the Accessory Apartment or principal structure does not comply with applicable provisions of the Accessory Apartment permit or the Uniform Fire Prevention and Building Code, and the owner or an authorized agent or occupant does not consent to such inspection, the Code Enforcement Officer may apply for a warrant to permit such inspection. Nothing in this subsection shall permit such inspection in such circumstances unless such warrant has been obtained.
- 16. The Accessory Apartment is subordinate to the principal.
- 17. When an existing Single-Family structure is altered to accommodate an Accessory Apartment, all construction associated with adaption of the existing structure shall be performed in a manner that retains and enhances the character of the structure. The design and construction of the adaption of the Accessory Apartment structure shall further be compatible with the parent structure on the premises and with the overall character of the neighborhood.

8.3 Multi-Family Dwelling (including Apartment House/Apartment Complex, Assisted Living, Condominium, and Townhome Facilities.

- A. Multi-Family Dwellings shall require a Special Use Permit and Site Plan Review. Multi-Family Dwellings shall also meet the following criteria:
 - 1. All structures containing Multiple-Family units shall have a pitched roof. The buildings shall not exceed two (2) stories in height.
 - 2. Common open space shall be provided for.
 - 3. All front yards attached to Multiple-Family structures shall have a clearly defined front yard using landscaping, fencing, hedging, or brick or stone wall. Front yards of attached townhouses may be unified into one (1) common yard treated as a single front yard for the entire building.

4. All Multiple-Family units shall have the following dimensions:

Maximum Building Size and Density: The maximum number of dwellings shall be no more than the residential density established for that District. The Planning Board shall ensure that any proposed density will meet all New York State/County Board of Health requirements for waste water treatment systems and water supplies. When multiple structures are included within a multi-family development, there shall be no more than four (4) dwelling units per individual structure if that density is allowed pursuant to Table 2.

5. All Multiple-Family development shall:

- a) Consist of structure of an architectural style that emulates single-family residences in building, design, entrance, and other architectural details, but with multiple doors.
 - b) Buildings should vary in appearance but share a common design style.
6. On-site pedestrian and vehicle circulation shall be included to link residential buildings with parking, adjoining streets, mailboxes, trash disposal, and other onsite amenities and designed to limit traffic hazards.
 7. Parking and traffic circulation should include appropriate Signs and striping to direct traffic on and off-site.
 8. Sidewalks shall be provided, as appropriate to connect the residential units with parking areas, public streets, recreation areas, and other apartment building(s) and other existing sidewalks, if present.
 9. Where more than one (1) building is provided for, there shall be space between buildings for emergency access.
 10. Solid waste and recycling receptacles of adequate capacity shall be provided for the maximum number of residents. Receptacles shall be screened from view by fencing or landscaping and regularly emptied to prevent odor and unsanitary conditions. The receptacle shall be designed to prevent loose litter. The receptacles shall not be placed in front yards.
 11. Snow storage areas shall be indicated on the Site Plan and shall not interfere with required parking and traffic circulation.
 12. Multi-Family buildings shall not exceed one hundred (100) feet in length. Buildings shall be oriented to the street.
 13. There shall be no blank front or side walls without windows, doors, or other fenestration. Windows, doors, porches, balconies, and entryways shall compose at least thirty (30%) percent of the length of the front elevation on each floor.
 14. Common open space shall be provided for.
 15. Private roads (those not maintained by the Town of Middleburgh) within a Multi-Family development shall not exceed an average grade of eight percent (8%). No section shall exceed a grade of ten percent (10%) unless otherwise allowed by Town standards. The local fire department and ambulance service shall be consulted to ensure adequate accessibility for emergency vehicles and services. (Review by Highway Superintendent).

8.4 Three-Family Dwelling.

- A.** Three-Family Dwellings shall require Site Plan Review. Three-Family Dwellings shall also meet the following design criteria:
1. Off-street parking shall be in the rear and/or to the side yard and the Planning Board may require screening from the building and the street.
 2. All front, side, and rear yards shall be as required by the dimensions table.
 3. Three-Family Dwellings shall emulate single-family residences in building, design, entrance, and other architectural details, but with multiple doors.
 4. Solid waste and recycling receptacles of adequate capacity shall be provided for the maximum number of residents. Receptacles shall be screened from view and regularly emptied to prevent odor and unsanitary conditions. The receptacle shall be designed to prevent loose litter. The receptacles shall not be placed in front yards.
 5. Parking, as required for Three-Family Dwellings, shall be a minimum of two (2) spaces per dwelling unit on-site and shall be designed and located without encroaching on any required yard or setback area.
 6. Schoharie County Department of Health approved water supplies, and sanitary systems shall be required prior to granting any zoning permit for a Three-family Dwelling. Such systems may be connected to existing or upgraded water supply and sanitary systems of the single-family dwelling or may be separate facilities. If a separate facility is necessary, all other standards, setbacks, and requirements of this Law and of the County Department of Health shall be met.
 7. No exterior changes shall be made which will alter or extend the existing foundation of the principal structure.
 8. The Three-family Dwelling is self-contained, with separate cooking, sleeping, and sanitary facilities for use by the occupant(s).

8.5 Commercial Logging.

- A.** To protect neighbors and the environment from unprofessional logging practices, the Town of Middleburgh shall require that commercial loggers shall adhere to the following requirements listed below and inform the Town Highway Superintendent of any Commercial Logging activity that proposes harvesting of more than fifty thousand (50,000) board feet of timber measured by international “1/4” log rule in any successive twelve (12) months that requires access along a Town Road. Landowners who are cutting less than fifty thousand (50,000) board feet of timber for their own use or for sale shall be exempt from this Section.
- B.** The applicant shall provide the Town Highway Superintendent with a map clearly identifying the area to be logged. This map shall identify the areas to be logged, access points, the name of the road to which it is accessing, locations of logging roads and all loading areas, and all stream crossings.
- C.** The Town Highway Superintendent shall have the authority to:

1. Perform all activities required by the Town of Middleburgh Road Damage Prevention Law;
 2. Order the suspension of logging operations if it is determined that conditions created by the spring thaw, adverse weather or other cause may likely damage a public road;
 3. Require the repair of roads, bridges, culverts damages as a result of a logging operation by the landowner, as per the Town of Middleburgh Road Damage Prevention Law.
- D.** All commercial timber harvesting shall comply with the following: New York State Department of Environmental Conservation regulations if the proposed activity will cross over a classified stream or wetland; the most current, Timber Harvesting Guidelines for New York State and Best Management Practices, as promulgated by the New York State Department of Environmental Conservation (DEC); Town of Middleburgh Road Damage Prevention Law; and the Town of Middleburgh Flood Damage Prevention Law available from the Town Clerk and/or the New York State Department of Environmental Conservation.

8.6 Telecommunication Facilities.

A. Applicability of Standards and Procedures.

1. No telecommunication tower and/or accessory structure/use shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these standards. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with these standards.
2. The standards shall apply to all affected property within the Town of Middleburgh.
3. These regulations will be in addition to the requirements and procedures in Article X, Special Use Permits, of this Law and all other applicable standards/laws.
4. At all times, shared use of existing tall structures (for example: water towers, church steeples, farm silos, etc....) and existing or approved towers shall be strongly preferred to the construction of new towers.
5. Telecommunications facilities proposed by an applicant that is not a public utility as defined by relevant statute shall not be permitted unless the applicant can utilize evidence and show need to use the facilities by a licensed public utility.

B. Proposed Shared Use of Existing Tall Structures or Existing or Approved Towers.

An applicant requesting a Special Use Permit where shared use of existing tall structures and existing or approved towers is proposed shall submit the following to the Planning Board:

1. All information required in Article X, Special Use Permits, of this Law.
2. Documentation of intent from the owner of the existing facility to allow shared use.
3. Report of a licensed professional engineer certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, or existing or approved tower, and the report explains what modifications, if any, will be required in order to certify the above.

4. Copy of the applicant's Federal Communications Commission (FCC) license.
5. Information to verify compliance with Section 8.6 (e-l) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
6. Completed Full Environmental Assessment Form.
7. Agricultural Data Statement (if applicable).
8. The Site Plan in accordance with Article IX, Site Plan Review and shall include grading plans for new facilities and roads, guy wire(s) and anchors, and any methods used to conceal modifications of the existing facility.
9. The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the Special Use Permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Article XIII, Administration and Enforcement, of this Zoning Law.

C. Proposed New Telecommunication Towers.

An application requesting a Special Use Permit where a new Telecommunication Tower is proposed shall submit the following to the Planning Board:

1. All information required in Article X, Special Use Permits, of this Law.
2. Documentation that shared use of existing tall structures and existing or approved towers is impractical.
3. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance (both within and outside of the Town of Middleburgh) of the proposed site and outlining opportunities for shared use of these existing facilities as an alternative to a proposed new tower.
 - a) The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical and/or financial reasons why shared usage is not practical in each case.
4. An applicant shall provide written requests and responses for shared use and information on alternative sites researched.
5. Copy of the applicant's Federal Communications Commission (FCC) license.
6. Completed Full Environmental Assessment Form.
7. Agricultural Data Statement (if applicable).

8. Information to verify compliance with Section E (4-13) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
9. The Site Plan in accordance with Article IX, Site Plan Review, shall include grading plans for new facilities and roads, and the location of guy wire(s) and anchors.
10. A “Zone of Visibility Map” that indicates locations where the tower may be seen and the impact of the tower base, guy wires, accessory buildings and roads from abutting properties and roads.
11. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the town including, but not limited to: public roads, Scenic Byways, state and local parks, public lands, preserves and historic sites, the Long Path, and any other location the Planning Board determines appropriate.
12. Adequate emergency and service access plans shall be provided.
13. Copies of notifications to the legislative bodies of the Towns of Broome, Cobleskill, Fulton, Schoharie, Wright, Berne, Village of Middleburgh, and Schoharie County Planning. Such notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
14. Letter of intent committing the new tower owner, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers or users in the future. Such letter shall commit the new tower owner and his/her successors in interest to:
 - a) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
 - b) Negotiate in good faith concerning future requests for shared use of the new tower, by other telecommunications providers or users.
 - c) Allow shared use of the new tower if another telecommunications provider or user agrees in writing to pay charges.
 - d) Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, pro rata shares of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
15. The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and/ or accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Article XIII, Administration and Enforcement, of this Law.

16. The successful applicant shall provide the Town of Middleburgh a bond to cover the cost of removal of the tower and accessory structures should the owner not remove the unused telecommunications facilities within six (6) months of the notification of discontinuance. A qualified engineer of the Planning Boards choice (in accordance with Subsection E (4) of this Section) will determine the bond amount. The successful applicant will provide the Town of Middleburgh Planning Board with proof of a bond within three (3) months after final Special Use Permit approval or before commencing construction, whichever comes first, or said Special Use Permit shall be deemed void. The successful applicant will provide the Town of Middleburgh Planning Board proof of a renewed bond for each term no less than sixty (60) days before such bond expires.
17. The successful applicant shall immediately obtain a policy of General Public Liability Insurance if a Special Use Permit is granted. The policy shall be obtained from an insurance company licensed to do business in New York State. The policy shall be an amount equal to the coverage carried by the Town of Middleburgh. A certificate of insurance shall be presented to the Planning Board within three (3) months after final Special Use Permit approval or before commencing construction, whichever comes first, or said Special Use Permit shall be deemed void. The certificate of insurance shall name the Town of Middleburgh as an additional insured. Said insurance coverage shall be maintained until such time as the telecommunication tower has been removed. The successful applicant will provide the Town of Middleburgh Planning Board with proof of insurance and/or insurance renewal on a yearly basis, no less than sixty (60) days before such policy expires.

D. Proposed Accessory Structures/Uses at Existing or Approved Telecommunications Facilities

An application requesting a Special Use Permit where accessory structures/uses are proposed at existing or approved telecommunications facilities shall submit the following to the Planning Board:

1. All information required in Article X, Special Use Permits, of this Law.
2. Copy of the applicant's Federal Communications Commission (FCC) license.
3. Completed Short/Full Environmental Assessment Form (Planning Board discretion).
4. Information to verify compliance with Section E (4-11) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses.
5. The Site Plan in accordance with Article IX, Site Plan Review, of this Law and shall include grading plans for new facilities and roads, and the location of guy wire(s) and anchors.
6. The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and/ or accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Article XIII, Administration and Enforcement, of this Law.

E. Design Standards for Telecommunications Towers and Accessory Structures/Uses.

1. The Planning Board may require that any new tower be designed to accommodate future shared use by other telecommunications providers and users. At a minimum, new towers shall be designed to provide for shared use by two (2) providers; or, designed so that they can be retrofitted to accommodate two (2) providers.
2. Unless specifically required by other regulations, all towers shall have a neutral earth tone or similar painted finish or be camouflaged to minimize negative visual impact. If a painted finish is required, said painted finish shall thereafter be maintained and repainted as required by the Code Enforcement Officer.
3. The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation. This requirement may be modified at the discretion of the Planning Board if the applicant can justify the need to exceed this height limitation. When lighting is required on the tower and is permitted by the FAA or other federal or state authority, the minimum lighting required shall be allowed and lighting shall be oriented inward and should not project onto any surrounding residential property.
4. The Planning Board may request a review of the application by a qualified engineer of the Planning Board's choice. Such engineer would evaluate the need for, and the design of, any new tower and/or the cost of telecommunication facility removal for purposes of the applicant obtaining any required bond. The cost of such review will be borne by the applicant.
5. All telecommunications towers and/or accessory structures/uses shall be setback from abutting parcels, recorded rights of way, and roads enough distance to contain on-site all icefall or debris from tower failure and preserve the privacy of any adjoining property. Towers shall be located with a minimum setback from any abutting parcels, recorded rights of way, and roads equal to one and one-half (1 ½) times the height of the tower, or one hundred (100) feet, whichever is greater.
6. Accessory structures/uses and attachments to towers shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. Any permitted lighting, shall be the minimum required, shall be oriented inward, and should not project onto any surrounding residential property.
7. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners, and streamers. Signs displaying owner contact information and safety instructions that are not of an advertising nature will be permitted at the discretion of the Planning Board and shall not exceed five (5) square feet in surface area.
8. Existing on-site vegetation and ground contours shall be preserved to the maximum extent possible. No cutting of trees exceeding five (5) inches in diameter (measured at a height of four (4) feet off the ground) or deposition of fill materials shall take place on site prior to Special Use Permit approval. If fill was deposited on the site five (5) years prior to an application for a Special Use Permit, the height of a new telecommunication tower will be measured from the original ground elevation.
9. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures/uses from adjoining property, public roads, and other important views or vistas.

10. Maximum use of existing roads, public or private, shall be made. Road construction shall always minimize ground disturbance and vegetation cutting to within the top of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimum visual disturbance and reduce soil erosion potential.
11. Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces based upon the applicant's recommendation.
12. Sites of proposed new telecommunications facilities and sites where modifications of existing telecommunication facilities are proposed, shall be adequately enclosed by a fence, design of which shall be approved by the Planning Board, unless the applicant successfully demonstrates to the Planning Board that such measures are unnecessary to ensure the security of the tower and the accessory structures/uses.
13. All Towers must meet or exceed current Federal Standards with the authority to regulate towers and antennas. If such standards are changed, then the owner of the tower and antennas governed by this Section shall bring the tower and antennas into compliance with the revised standards within one (1) year of the effective date of the change, unless a more stringent compliance schedule is required by the Federal Government. Failure to bring towers and antennas into compliance with such revised standards shall constitute grounds for the Town to order the removal of the tower or antennas at the owner's expense.

8.7 Wind Energy Facilities.

A. Applicability.

The requirements of this Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Zoning Law, including modification of existing Wind Energy Facilities and wind measurement towers erected for the purpose of testing the feasibility of wind energy generation, except for minor wind turbines which have a rated capacity of not more than ten (10) KW and which are intended primarily to reduce consumption of utility power at the situated location. A minor wind turbine, however, shall be set back no less than one and one-half (1 ½) times its height from any public roads or property lines.

B. Permits.

1. Permit Requirement. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Middleburgh except by first obtaining a Wind Energy Facility Permit as provided under this Law. Wind energy facilities existing prior to the enactment of this Law, shall not be required to have a permit.
2. Exemptions. No permit or other approval shall be required under this Law for mechanical, non-electrical wind turbine utilized solely for agricultural operations. Replacement in-kind or modification of a Wind Energy Facility may occur without Planning Board approval when (1) there shall be no increase in total height; (2) no change in the location of the wind turbine; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the wind turbine.

C. Transfer.

No transfer of any Wind Energy Facility or Wind Energy Facility Permit, nor sale of the entity owning such facility shall eliminate the liability of an applicant nor of any other party under this Law.

D. Waivers.

The Planning Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Section to improve the quality of any Wind Energy Facility and better protect the health, safety and welfare of the Town. Area requirements (setbacks) and/or noise requirements shall not be waived by the Planning Board except as described in §8.7 (L) and § 8.7, (R) (5) of this Section. The Planning Board shall consider the impact of the waiver on the neighborhood, including the potential benefits or detriment to nearby properties, the benefits or detriments to the applicant, feasible alternatives and the scope of the request. The Planning Board may attach such conditions as it deems appropriate to waiver approvals to ensure public health, safety and welfare.

E. Application Requirements.

A complete application for a Wind Energy Facility Permit shall include:

1. A completed application for a Wind Energy Facility Permit. The applicant shall be responsible for all costs and fees associated with completing the application requirements.
2. A Site Plan prepared by a licensed professional engineer, including:
 - a) Property lines and physical dimensions of the Site;
 - b) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of any proposed wind turbines, or one and a half (1½) times the total height of such wind turbines, whichever shall be greater.
 - c) Location and elevation of each proposed wind turbine.
 - d) Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
 - e) Locations of buffers as required by this Law.
 - f) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the nearest proposed wind turbine.
 - g) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
 - h) In addition, all the provision of the Town of Middleburgh Site Plan Review Law shall apply. (See Article IX, Site Plan Review of this Law.)

- i) A vertical drawing of the wind turbine showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One (1) drawing may be submitted for each wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data, and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine.
- j) A lighting plan showing any FAA-required lighting and other proposed lighting. Lighting shall be directed up and out, not down.
- k) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town of Middleburgh Planning Board on the recommendation of its Town Engineer or consultants.
- l) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- m) An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- n) A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning costs shall be kept current, and the manner in which the wind turbine shall be decommissioned, and the Site restored, less any fencing or residual minor improvements requested by the landowner.
- o) List of property owners, with their mailing addresses, within two thousand (2,000) feet of the outer boundaries of the proposed Site.
- p) A complaint resolution process to address complaints from nearby residents. The process shall include use of an independent arbitrator paid for by the applicant if the complaint cannot be resolved amicably between the parties. The applicant shall make every reasonable effort to resolve any complaint within sixty (60) days.
- q) A transportation plan (see § 8.7 (J)) describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, as well as measures which will be taken to restore damaged/disturbed access routes following construction.
- r) A Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the Wind Energy Facility. This Full Environmental Assessment shall, at a minimum, include:
 - i. A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences

and describe measures to be taken to eliminate shadow flicker problems. If shadow flicker impacts are of either high intensity or duration (more than 25 hours per year), then a second level analysis of shadow flickers modeling will occur, including an on-site assessment of property conditions. If shadow flicker cannot be minimized to a shorter duration or intensity, project modifications may be required. It is desirable to have no shadow flicker on off-site residences.

- ii. A visual impact study of the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the Site accurately depicting existing conditions shall be included as well as a map indicating areas where the wind turbines will be visible to a person at five (5) feet above ground level. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.
- iii. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site, as well as Schoharie County Emergency Service including but not limited to fire coordinator, emergency management, sheriff.
- iv. A noise analysis by a competent acoustical consultant including:
 - a. A description and map of the project's noise-producing features which will include but not be limited to the range of noise levels expected (A-weighted, C-weighted and G-weighted), the tonal and frequency characteristics expected, the duration of sound, frequency of occurrence, and the effects of changes in wind speed and direction;
- s) The manufacturer's data and standards for all structures, including designed noise levels and the noise levels determined by testing in the field.
- t) A survey and report prepared by an independent, qualified, New York State engineer that analyzes the preexisting ambient noise including seasonal and twenty-four (24) hour variations at residences within one (1) mile of the Site boundary;
- u) The analysis must be accompanied by a topographic map showing, in increments of five (5) decibels out to a level of twenty (20) decibels, the noise level contours of the Site vicinity, in order to visualize the cumulative noise impacts from the Wind Energy Facility on surrounding properties. All residences within the greater of one (1) mile of the Site boundary or the twenty (20) decibel contour shall be clearly shown;
- v) Because the Town of Middleburgh is hilly where noise can carry far and in unexpected directions, the study must consider sounds carried from hilltop to hilltop, hilltop to valley, and along valleys in a radius of ten (10) miles from a Wind Energy Facility. The study must also produce an analysis of cumulative noise impacts;
- w) The applicant shall submit a design for post-development noise monitoring as well as a description of proposed noise control features, including specific measures to protect workers, and to mitigate noise impacts to a level of insignificance off-site. A summary of the applicant's proposed noise complaint resolution program must be included;

- x) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication by an independent contractor as determined by the Planning Board with the applicant paying all fees;
- y) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species and bat species. The scope of such assessment shall be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service and must at a minimum consist of a literature survey for threatened and endangered species and provide relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for post-installation studies;
- z) An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase including construction of access roads;
- aa) An assessment of archaeological resources that may be impacted by the project. Such assessment shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation;
- bb) A report from an independent New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade could be thrown. (The basis of the calculation and all assumptions must be disclosed). The incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included;
- cc) An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding;
- dd) A geotechnical report that includes: soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing, a bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water quality for all wells within two (2) miles of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis;
- ee) A statement signed under penalties of perjury that the information contained in the application is true and accurate.

F. Application Review Process.

1. Applicants must arrange a pre-application meeting with the Planning Board and consultants retained by the Town for application review.
2. Ten (10) copies along with, if possible, one (1) digital copy containing all application materials of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of submission.
3. The Planning Board shall, within forty-five (45) days of receipt, or such longer time as may be accepted by the applicant, determine if all information required hereunder is included in the application. If the application is deemed incomplete, the applicant shall be provided with a written

statement listing missing data. If applicant fails to provide data within forty-five (45) days, the application shall expire. Upon submission of a complete application, the Planning Board shall proceed with its review.

4. The Planning Board shall hold at least one (1) public hearing on the application. Notice shall be published in the Town's official newspaper, no less than fourteen (14) nor more than thirty-one (31) days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers. All adjoining property owners within two thousand (2,000) feet of the outer boundary of a proposed Wind Energy Facility shall be given notice of a public hearing via certified mail at the expense of the applicant.
5. Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.
6. Following receipt of the recommendation of the Schoharie County Planning Commission (if applicable), the holding of the public hearing, and completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the Wind Energy Facility Permit application, in accordance with the standards in this law. The Planning Board may also impose financial guarantee and inspection requirements and require permit renewals. Any denial shall be in writing setting forth competent reasons for such denial with references to relevant sections of this Law.

G. Wind Energy Facility Development Standards.

The following standards shall apply to Wind Energy Facilities in the Town of Middleburgh.

1. All power transmission lines from the tower to any building, substation, or other structure shall be located underground in accordance with National Electrical Code Standards.
2. No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Town of Middleburgh Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.
3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
4. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
5. All applicants shall use measures to reduce the visual impact of wind turbines to the greatest extent possible. Wind turbines shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
6. Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.

7. No wind turbine shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other communication systems would produce electromagnetic interference with signal transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of issues with the affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Facility Permit for the specific wind turbine or wind turbines causing the interference.
8. All construction debris shall be removed from the Site or otherwise disposed of in a manner acceptable to the Planning Board.
9. Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the New York State Department of Agriculture and Markets.
10. Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
11. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations and such standards as shall be applied by the Planning Board on the advice of the Town Engineer and other Town consultants.
12. Wind turbines shall be located in a manner that minimizes shadow flicker on off-site residences. It is desirable to have no shadow flicker on off-site residences.

H. Required Site Safety Measures.

1. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades and turbine components.
2. Accessory facilities or equipment shall be gated or fenced to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects of the use.
3. Warning signs shall be posted at the entrances to the Wind Energy Facility and at base of each tower warning of electrical shock or high voltage and containing emergency contact information.
4. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
5. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
6. Wind Energy Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are always kept securely locked.

I. Traffic Routes and Road Maintenance.

1. Construction and delivery vehicles for Wind Energy Facilities shall propose, and the Planning Board shall approve or modify, designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads and impacts on local business operations.
2. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a Wind Energy Facility. A public improvement bond shall be required prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town, Village, County or State for any damage to Town, Village, County or State roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent and/or the Schoharie County Department of Public Works and/or the State Department of Transportation to obtain a written recommendation for bonding form and amount, which form, and amount shall be approved by the Planning Board.
3. The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town, Village, State or County roads along the proposed route.

J. Setbacks, Noise and Height.

1. Each wind turbine shall be set back as follows:

Residences: no less than one thousand five hundred (1,500) feet.

Property lines: no less than one thousand five hundred (1,500) feet.

Public Roads: no less than one thousand five hundred (1,500) feet.

State Wetlands: no less than one thousand (1,000) feet.

2. The statistical sound pressure level generated by a Wind Energy Facility shall not exceed the ambient decibel level, both A-weighted and C-weighted, plus 5 decibels measured anywhere along the Site boundary. Ambient sound level measurements shall employ all practical means to reduce or compensate for the effect of wind generated noise at the microphone to measure the actual sound level most accurately. Ambient sound level measurements should be performed when wind velocities aloft are sufficient to allow wind turbine operation and should report ambient sound levels for wind speeds aloft corresponding to turbine cut-in as well as the wind speed aloft corresponding to production of the greatest noise. The sound pressure level at any off-site residence shall not exceed ambient sound plus 5 decibels, both A-weighted and C-weighted, as determined in accordance with the stipulations of Section 8.7(F)(2) (r) (iv). Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement.

K. Noise and Setback Easements.

1. An applicant may, with approval from the Planning Board, meet noise and setback standards by obtaining written consents from affected property owners stating they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Law, and that consent is granted to allow noise levels to exceed the maximum limits provided herein or reduce setbacks to less than required.
2. Such consents shall be in the form required for easements and be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall

state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the decommissioning of the benefited wind turbine in accordance with this Law, or the acquisition of the burdened parcel by the owner of the benefited parcel or the wind turbine. No such easement shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this Law.

L. Issuance of Wind Energy Facility Permits.

1. The Planning Board should, within one hundred twenty (120) days of determining the application is complete, and upon consideration of the standards in this Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended by the Planning Board for just cause.
2. If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Wind Energy Facility Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
3. The decision of the Planning Board shall be filed within fifteen (15) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
4. If any approved Wind Energy Facility is not substantially commenced within two (2) years of issuance of the Wind Energy Facility Permit, the Wind Energy Facility Permit shall expire, unless the Planning Board shall have granted an extension. Substantially commenced shall mean that the applicant has lawfully begun construction pursuant to the permit and expended at least twenty-five percent (25%) of the estimated cost of the project.

M. Abatement.

1. If any wind turbine remains non-functional or inoperative for a continuous period of twelve (12) months, the owner shall remove said system at its own expense following the requirements of the decommissioning plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the owner demonstrates to the Town that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is functioning, which reports may be redacted as necessary to protect proprietary information.
3. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the decommissioning plan.

N. Limitations on Approvals.

Nothing in this Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

O. Permit Revocation.

1. The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Facility Permit and this Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have ninety (90) days after written notice from the Planning Board, to cure any deficiency. An extension of the ninety (90) day period may be considered by the Planning Board, but the total period may not exceed one hundred eighty (180) days.
2. A wind turbine shall always be maintained in operational condition, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a wind turbine become inoperable or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within ninety (90) days after written notice from the Planning Board. The applicant shall have ninety (90) days after written notice from the Planning Board, to cure any deficiency. An extension of the ninety (90) day period may be considered by the Planning Board, but the total period may not exceed one hundred eighty (180) days.
3. Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or order revocation of the Wind Energy Facility Permit for the wind turbine and require its removal within ninety (90) days. If the wind turbine is not removed, the Planning Board shall have the right to use the security posted as part of the decommission plan to remove the wind turbine.

P. Wind Measurement Towers.

Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Wind Energy Facility Permit, to determine the wind speeds and the feasibility of using particular sites. The distance between a wind measurement tower and the property line shall be at least one and a half (1½) times the total height of the tower. Wind Energy Facility Permits for wind measurement towers shall be issued for a period of two (2) years and shall be renewable upon application to the Planning Board for one (1) additional year. An application for a wind measurement tower shall include:

1. Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.

2. Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
3. Proposed development plan.
4. Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for wind energy generation.
5. Other development standards as set forth above for Wind Energy Facilities shall be applied to the maximum extent practicable, as determined by the Planning Board, recognizing the temporary nature of wind measurement towers.

Q. Small Wind Turbines.

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all Wind Energy Facilities but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All Small Wind Turbines shall comply with the following standards and with all other requirements of this Law not in conflict herewith:

1. A system shall be located on a lot a minimum of one (1) acre in size; however, this requirement can be met by multiple owners submitting a joint application.
2. Only one (1) Small Wind Turbine per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one (1) Site for purposes of this Law.
3. A Small Wind Turbine shall be used primarily to reduce the on-site consumption of electricity.
4. Total heights shall be a maximum of one hundred (100) feet on parcels between one (1) and five (5) acres and one hundred fifty (150) feet or less on parcels of five (5) or more acres.
5. A Small Wind Turbine shall be set back one and one-half (1.5) times the height of the tower. The Planning Board may waive this provision if the applicant's parcel cannot meet this requirement.
6. The maximum turbine power output is limited to one hundred (100) kW.
7. Tower-climbing apparatus shall be located no closer than twelve (12) feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six (6) feet in height that encloses the tower shall be installed to restrict tower access.
8. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six (6) feet high or sheathed in bright orange or yellow covering from the ground up to a minimum of eight (8) feet.

R. Fees.

1. The Town Board shall, by resolution, establish and from time to time modify a schedule of fees for Wind Energy Facility Permit applications.
2. The Planning Board may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to Site inspections, the construction and modification of the Site, once permitted, and any requests for recertification. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of the application.
3. The initial deposit shall be \$7,500 and shall be placed with the Town preceding the pre-application meeting. The Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services on a monthly basis, which amounts will be charged to the escrow account with notice to the applicant. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.
4. Should the amount held in escrow by the Town be more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. The total amount of the funds required for these services may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of construction.
5. The initial deposit in the case of Small Wind Turbines shall be no more than \$250.00 with a minimum balance to be maintained in escrow of at least \$100.00. All other provisions of Section R shall apply to Small Wind Turbines.

S. Tax Exemption.

The Town hereby does not exercise its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

8.8 Outdoor Wood Boiler/Furnace.

- A. It is the intent of this Section to establish restrictions upon construction, installation, and operation of Outdoor Wood Boilers within the limits of the Town of Middleburgh for securing and promoting the public health, comfort, convenience, safety, welfare, and prosperity of the Town and its inhabitants. It is generally recognized that the type of fuel uses, and the scale and duration of the burning of such Boilers create noxious and hazardous smoke, soot, fumes, odors, and air pollution, can be detrimental to citizen's health, and can deprive neighboring residents of the enjoyment of their property premises.
 1. All new Outdoor Wood Boilers shall meet all the requirements of 6 NYCRR 247 (Outdoor Wood Boilers.)
 2. In addition to all requirements of ECL Part 247, the following requirements shall be met:
 - a) The Outdoor Wood Boiler is equipped with a properly functioning spark arrester.

- b) The Outdoor Wood Boiler (excluding the chimney stack) is sufficiently screened so that the same is substantially invisible when viewing the property from the road or roads to which the property is adjacent.
 - c) No Outdoor Wood Boiler shall be placed in any front yard.
 - d) The Outdoor Wood Boiler is not located within one thousand (1,000) feet of parks maintained or operated by the Town of Middleburgh or any schools. This shall not include foot or bicycle paths unless the same are wholly located within a park maintained by the Town of Middleburgh.
3. Notwithstanding any of the above, in no event shall the emissions of the Outdoor Wood Boiler exceed any mandatory emissions standard promulgated by any agency, division, department or office of the Federal or New York State Government.
 4. All Outdoor Wood Boilers in existence prior to the enactment of this Zoning Law shall be allowed to continue operation. All existing Outdoor Wood Boilers that do not meet these requirements shall be considered a Nonconforming Use.
 5. Suspension of Permit. A permit issued pursuant to this Law may be suspended as the Code Enforcement Officer may determine necessary to protect the public health, safety, and welfare of the residents of the Town of Middleburgh if:
 - a) Emissions from the Outdoor Wood Boiler that exceeds standards established in ECL Part 247.
 - b) The Outdoor Wood Boiler creates a nuisance or otherwise violates and applicable local (including County), state, federal law, ordinance, statute, rule or regulation. A suspended permit may be reinstated once the condition which resulted in the suspension is remedied and reasonable assurances are given that such condition will not recur.

8.9 Manufactured Home.

Manufactured Homes, not located in a Manufactured Home Park, will be permitted only under the following conditions:

- A. In all Districts a Manufactured Home located on a private lot owned by the owner of said Manufactured Home will be permitted when:
 1. All the area regulations for such Districts, as listed in Table 2 of this Law, have been complied with.
 2. The Manufactured Home shall be placed on a six inch (6") reinforced concrete slab or suitable foundation capable of containing the Manufactured Home in a stable position and with anchors or tie-downs capable of securing the stability of the Manufactured Home.
 3. The Manufactured Home is provided with skirts to screen the space between the Manufactured Home and the ground. Such skirts shall be of a permanent material providing a finished exterior appearance.

4. Unit Installation. At the time of installation of the Manufactured Home, the tires and wheels, and the hitch, shall be removed and the unit shall be securely blocked, leveled, tied down, and connected to the required utility systems and support services.
5. Any construction of storage space, additional rooms, or enclosed patios or carports shall have a finished exterior appearance like the existing Manufactured Home. No exposed building paper, wallboard, or other structural material will be permitted.
6. The Manufactured Home bears the seal required by the State of New York or an equivalent acceptable to the State of New York. New Manufactured Home installations shall consist of Manufactured Homes no older than fifteen (15) years old.
7. A Certificate of Compliance indicating that all requirements of this Section 8.9 have been met.

8.10 Manufactured Home Park.

Manufactured Home Parks are allowed in R-3 District only, by Special Use Permit authorized by the Planning Board, when the provisions of this Section have been complied with. The Planning Board may impose additional conditions on approval provided such conditions are reasonable related to the goal of preserving neighborhood character.

A. Application for Permit.

Written application for a permit will be filed in duplicate with the Code Enforcement Officer and shall include the following:

1. Names and addresses of all applicants, if an individual or partnership, and the names and addresses of principal officers if a corporation;
2. Name and address of owner of land upon which the Manufactured Home Park is to be located;
3. Location map;
4. Sketch drawing(s) of the proposed Manufactured Home Park indicating how it is to be designed to be in conformity with the requirements of Section 8.10 (D) of this Law;
5. If public water and sewerage systems are not to be used, a written statement from the health officer for Schoharie County indicating what measures will be necessary for the Manufactured Home Park;
6. Sketch Plans or written descriptions of all buildings, streets, parking areas, pedestrian accommodations, lighting, recreation and open spaces, and landscaping to be constructed or provided within the Manufactured Home Park;
7. An indication of existing topography and drainage patterns including wet or swampy areas.

8. A copy of all contemplated Manufactured Home Park rules, regulations and covenants; a list of management and tenant responsibilities; a written statement of any entrance and exit fees, utility connection fees, or any security deposits to be charged.
9. Such further information as the developer may feel is necessary to describe his/her intent and ability to comply with the environmental, health, and safety standards of this Law.

B. Procedure and Permits.

1. The Code Enforcement Officer shall follow the procedures specified in Article XIII, Administration and Enforcement, of this Law.
2. The Planning Board shall act in accordance with Article X, Special Use Permits, of this Law except that the Special Use Permit, if authorized, shall be temporary. Issuance of a Temporary Special Use Permit is authorization for the Applicant to proceed with final plans incorporating any conditions attached to said Temporary Special Use Permit.
3. Final plans for the proposed Manufactured Home Park, or a portion of it if construction is to be staged, shall be submitted to the Planning Board within one (1) year from the date of issuance of the Temporary Special Use Permit or such Temporary Special Use Permit may be withdrawn.
4. Upon approval of final plans by the Planning Board, the Code Enforcement Officer shall issue a permit for construction.

C. Renewal of Permits.

The Code Enforcement Officer shall review a Manufactured Home Park Permit every two (2) years from the date of issuance. If the Manufactured Home Park has not been constructed in accordance with approved plans and all conditions attached thereto, or if a violation of this Law shall be found, or if any unapproved change shall have taken place, the permit will not be renewed until said Manufactured Home Park has been brought into compliance. In such case the Code Enforcement Officer shall serve an order upon the holder of the permit in accordance with the provisions of Article X, Special Use Permits, of this Law.

D. Environmental Requirements.

1. Density and Lot Size. The density of development in a Manufactured Home Park shall not exceed four (4.0) units per gross acre with a minimum lot size per Manufactured Home of six thousand (6,000) square feet and a minimum width of fifty-five (55') feet.
2. Separation. Manufactured Home Units may be positioned in a variety of ways within a Manufactured Home Park provided that a separation of at least thirty (30') feet is maintained between units. Approved porches, carports, decks, and additions shall not intrude into this thirty (30') feet. A drawing of the proposed layout of Manufactured Home Units should be prepared.
3. Setback. No Manufactured Home shall be located less than twenty-five (25') feet from the pavement edge of a private street or twenty-five (25') feet from the right-of-way of any public street within the Manufactured Home Park. A minimum of thirty (30') feet shall be maintained between Manufactured Home Units and all property lines except that at least fifty

(50') feet shall be maintained between all Manufactured Home Units and any property line abutting an existing public road or highway.

4. Only one (1) Manufactured Home shall be permitted to occupy any one (1) Manufactured Home Lot.
5. Each Manufactured Home Park shall be marked off into Manufactured Home Lots.
6. Each Manufactured Home Park shall maintain at a minimum a fifty (50') foot vegetative buffer area, but can be increased after review and determination by the Planning Board from public lands and adjacent property lines. The buffer area shall be made up of a mixture of native shrubs, and trees, which at the time of planting will provide an opaque screen year-round six (6') to eight (8') feet in height. Other equally acceptable screening maybe substituted upon approval of the Planning Board.
7. Road Layout and Construction. A drawing of the proposed Manufactured Home Park road layout, including connections to be made to adjacent existing roads or highways, shall be included in all Manufactured Home Park plans. Straight, uniform gridiron road patterns should be avoided unless Manufactured Home clustering, landscaping, and an interesting open space system can relieve them. All roads within a Manufactured Home Park shall be at least twenty (20') feet wide and constructed in a manner acceptable to the Town of Middleburgh Planning Board, after recommendation by the Town of Middleburgh Fire Department.
8. A Manufactured Home Park shall be provided with suitable and operable fire extinguishers, fire hydrants, and other fire alarm and protection devices as may be prescribed by the fire district where the Manufactured Home Park is located. There shall be clear numbering of Manufactured Homes within the Manufactured Home Park with a layout map provided to the Fire Chief or approved representative and to ambulance and police agencies. Interior roads within a Manufactured Home Park shall be built to accommodate emergency vehicles. The local fire department and ambulance service shall review and approve plans for Manufactured Home Park to ensure adequate safety and emergency response.
9. Parking. At least two (2) off-street parking spaces shall be provided for each Manufactured Home Unit. Such spaces may be located on the individual Manufactured Home Site or grouped to serve two (2) or more Manufactured Home Units. Off-street parking spaces shall be constructed of at least a twelve (12") inch gravel base with a four (4") inch limestone surface material, such as crusher run. Supplemental parking area shall be provided for visitor parking and for the storage or temporary parking of travel trailers, campers, boats, snowmobiles, and similar auxiliary vehicles and shall be landscaped appropriately.
10. Manufactured Home Sales Area. The display and sale of Manufactured Homes shall be permitted in a Manufactured Home Park only if the sales area is landscaped and provided with a hard, dust-free surface for the off-street parking of at least six (6) cars and no more than eight (8) Manufactured Home Units are displayed at any one (1) time. No display unit shall be located less than fifteen (15') feet from a public right-of-way.
11. At the main entrance to a Manufactured Home Park, a layout map, showing the location of each lot by number shall be displayed. Each lot within the Manufactured Home Park shall permanently display an assigned reflective number so that it is visible from the roadway upon which it fronts.

12. Open Space Areas and Landscaping. A variety of open spaces shall be provided to be usable by, and easily accessible to, all Manufactured Home Park residents. Such open space shall be provided based on five hundred (500) square feet for each Manufactured Home Unit with a total minimum requirement of twelve thousand (12,000) square feet. Part or all of such open space shall be in the form of developed recreation areas located in such a way, and of adequate size and shape, as to be usable for active recreation purposes.
13. Manufactured Home Stand. Each Manufactured Home site shall be provided with a stand, which will give a firm base and adequate support for the Manufactured Home. Such stand shall have a dimension approximating the width and length of the Manufactured Home and any expansion or extensions thereto. Well-anchored tie-downs shall be provided at least on each corner of the stand with spacing no greater than ten (10') feet apart on each side. The Manufactured Home shall be placed on a six inch (6") reinforced concrete slab or suitable foundation capable of containing the Manufactured Home in a stable position and with anchors or tie-downs capable of securing the stability of the Manufactured Home.
14. Manufactured Home Unit Installation. At the time of installation of the Manufactured Home, the tires and wheels, and the hitch, shall be removed and the Manufactured Home Unit shall be securely blocked, leveled, tied down, and connected to the required utility systems and support services. The Manufactured Home shall be completely skirted prior to occupancy. Said skirts shall be of a permanent material and provide a finished exterior appearance.
15. Every Manufactured Home shall have a manufacturer's label certifying that the Manufactured Home follows all Federal construction and safety standards and every Factory-Manufactured Home or component shall bear the seal required by the State of New York or an equivalent acceptable to the State of New York. New Manufactured Home installations shall consist of Manufactured Homes no older than fifteen (15) years old. Every Manufactured Home shall also bear a data plate, affixed in the manufacturing facility, bearing no less than the following information:
 - a) "This Manufactured Home is designated to comply with the Federal Manufactured Home construction and safety standards in force at the time of the manufacture."
 - b) Reference to the structural zone and wind zone for which the Manufactured Home is designed.
16. Water Supply. A sufficient supply of pure, healthful drinking water approved by the Schoharie County Health Department or such health department having jurisdiction shall be provided in a Manufactured Home Park; if water is from a private source, an approved private supply and system shall be established and must be in accordance with the regulations of the Schoharie County Health Department. Periodic tests shall be made as requested by the Schoharie County Health Department or other such agency having jurisdiction.
17. Sewage Disposal. When public sewage disposal is not available an approved private system shall be established. The design and construction of all components of such system shall be subject to the inspection and approval of the appropriate health department or local official.
18. Solid Waste Disposal. Provisions shall be made and approved for the storage, collection, and disposal of solid waste in a manner that will cause no health hazards, rodent harborage, insect breeding areas, fire hazards or air pollution. Storage for solid waste containers shall be

screened from public view and components of such system shall be subject to inspection by the Schoharie County Health Department.

19. Electricity and Telephone. The distribution system for electrical and telephone service shall be installed underground and shall comply with the requirements of the utility and telephone company.
20. Fuel Systems. All Manufactured Home Units shall be provided with facilities for the safe storage of necessary fuels. All systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
21. Mail Service. Mailbox location shall provide safe and easy access for the pickup and delivery of mail. Mailboxes grouped for cluster delivery shall be located so that stopping for pickup and delivery will not occur on the public right-of-way.
22. No addition to a Manufactured Home shall be constructed which would increase the living floor space of that Manufactured Home; additions for the purposes of storage space, protection from sun and weather or other similar purpose, including but not limited to awnings, covered patios and carports may be permitted upon approval of the Manufactured Home Park Operator and the Code Enforcement Officer. An addition shall be made by the Manufactured Home manufacturer and/or built in conformance with the New York State Uniform Fire Prevention and Building Code. Any additions shall have a finished exterior appearance like the existing Manufactured Home.
23. Street lighting shall be provided at all entrances and exits to the Manufactured Home Park and on all internal streets, intersections, walkways, and common areas and shall be architecturally compatible with the rural landscape.
24. Pedestrian ways shall be provided in the Manufactured Home Park and shall form a logical, safe, and convenient system of pedestrian access to all project facilities.
25. Landscaping. Trees and shrubs shall be provided along walks and streets, around recreation areas, and along the outer property line of the Manufactured Home Park. Trees shall be planted at an interval of not less than fifty (50') feet where feasible.

E. Park Operation, Maintenance and Inspections.

1. Occupancy Restrictions. No space shall be rented in any Manufactured Home Park for the placement and use of a Manufactured Home Unit for residential purposes, except for periods in excess of sixty (60) days. No Manufactured Home manufactured more than fifteen (15) years prior to its placement in the Manufactured Home Park may be occupied.
2. Responsibility of Manufactured Home Park Operator. The person or persons to whom a permit for a Manufactured Home Park is issued shall be responsible for operation of the Manufactured Home Park in compliance with this Law and shall provide adequate supervision to maintain the Manufactured Home Park, its common grounds, streets, facilities and equipment in good repair and in a clean and sanitary condition.
3. Responsibility of Manufactured Home Park Occupants. The Manufactured Home Park Occupant(s) shall be responsible for the maintenance of his or her Manufactured Home Unit

and any appurtenances thereof and shall keep all yard space on his or her Manufactured Home Site in a neat and sanitary condition.

4. Inspection. It shall be the duty of the Code Enforcement Officer to make necessary inspections required every second year for renewal of Manufactured Home Park permits. Such inspection shall be carried out at reasonable times, after prior notice to the Manufactured Home Park Operator, and in emergencies, whenever necessary to protect the public interest.

F. The Planning Board Manufactured Home Review Considerations.

1. Whether satisfactory ingress and egress exists and the effect of increased multi-modal traffic on area roads and highways.
2. The design and adequacy of community streets, parking areas, driveways, pedestrian ways, and lighting.
3. Landscaping, open spaces, and recreation.
4. The impact upon schools, public services, and utilities.

8.11 Temporary Dwelling Units (Recreational Vehicles).

A. Temporary Dwelling Units (Transportable).

Temporary Dwelling Units not located in a commercial travel trailer park may be inhabited by non-renters on a temporary basis for a period not to exceed a total of thirty (30) days duration per calendar year in accordance with the following conditions. No permit or fee is required unless the number of inhabitation days desired is greater than specified, in which case a Special Use Permit shall be requested:

B. Conditions.

1. Utilities. Permanent utility systems used exclusively for Temporary Dwelling Units in Residential and Commercial Zoning districts shall not be constructed.
2. Nuisances. Temporary Dwelling Units shall not be utilized in such a manner as to cause a nuisance.
3. Field Offices. Contractors may use Temporary Dwelling Units for “field offices” after obtaining a Special Use Permit. Additionally, Temporary Dwelling Units may be utilized by owner/builders during the construction of a structure. Temporary Special Use Permits shall be valid up to one (1) year with extensions possible.

C. Storage.

When a Temporary Dwelling Unit must be stored or kept outdoors, it shall be required to meet the following conditions:

1. A Temporary Dwelling Unit may be stored outdoors (uninhabited) on any lot indefinitely except on Floodplain Protection District lots, which are regulated by the Supplemental Section on Floodplain District Regulations.
2. Temporary Dwelling Units and noncommercial trailers shall not intrude into the right-of-way or obstruct sight visibility from adjacent driveways, rights-of-way, or access easements.
3. Parking or storage of Temporary Dwelling Units or noncommercial trailers outdoors for compensation is not permitted unless parcels are in a Commercial District.
4. Temporary Dwelling Units and noncommercial trailers shall be kept in a side or rear yard in compliance with setback requirements applicable to accessory structures. If the vehicle cannot be stored in a side or rear yard due to site constraints, one (1) Temporary Dwelling Unit or noncommercial trailer may be in the front yard area as follows:
 - a) In the driveway, provided setback requirements applicable to the primary structure are met.
5. Temporary Dwelling Units shall be maintained in a clean, well-kept state which does not detract from the appearance of the surrounding neighborhood.
6. Disabled or Unregistered Temporary Dwelling Units or noncommercial trailers shall not be parked or stored outdoors (except for kayaks, row boats, paddle boats, canoes, or other watercraft, which is designed to be, and is, non-motorized) within sight of the public right-of-way or adjacent residents. Auto or boat repair shops may have disabled licensed vehicles on the premises which are being repaired.
7. Area requirements (e.g., front, rear, and side yard setback requirements) shall be met.

8.12 Gasoline Filling Station.

A. General Standards.

In a District where permitted, a Gasoline Filling Station shall be subject to the following restrictions:

1. Principal buildings shall be oriented to the street.
2. Except for any access drive, the area to be used by motor vehicles as well as any structure shall not encroach on any required yard area.
3. No fuel pump shall be located closer than twenty (20') feet from any side lot line nor closer than twenty-five (25') feet from any street line or highway street line or highway right of way measured from the edge of the fuel island. Pumps shall be sited to the side or rear of the structure and not between the building and the street.
4. Canopies shall not exceed sixteen (16') feet in height or the height of the principal building, whichever is less. Canopies shall be architecturally integrated with the principal building using the same or compatible materials, colors, and roof pitch. Flat canopy roofs are prohibited.

5. No access drive shall be within two hundred (200') feet of and on the same side of a street as a school, library, theater, church, or other public gathering place, park, playground or fire station.
6. All major repair work and servicing shall be done completely within an enclosed building.
7. A Gasoline Filling Station that does not perform service or repair work shall not have any apparent unused cars stored on the property.
8. Entrance or exit driveways shall be in accordance with the Town of Middleburgh Road and Highway Specifications. Such driveways shall be laid out as to avoid the necessity of any vehicle backing across the right-of-way.
9. The Planning Board may limit the number of gas pumps to ensure consistency in scale between the Gas Filling Station and adjacent land uses.
10. There shall be no amplified sound audible at property lines. The Planning Board may prohibit outdoor use of amplified sound for Gas Filling Station if, in their opinion, such sound could disturb adjacent residences.
11. All pumps, pump islands, tanks, piping, and canopies shall be removed at the owner or applicant's expense when fuel dispensing activity has been inactive for a period of twelve (12) months.
12. The Planning Board may require a multi-modal traffic impact analysis.
13. The Planning Board may limit hours of operation or limit acceptable hours of fuel delivery where a Gas Filling Station is adjacent to residential uses.
14. Applicants shall evaluate site conditions and provide information, analysis, and evidence that the proposed Gas Filling Station will not degrade the quality of the groundwater. Mitigation measures, if needed, shall be implemented to reduce or eliminate risks to groundwater.



8.13 Junkyards.

- A. All Junkyards shall comply with the requirements of this Zoning Law, the New York State Automobile Junkyard Law, Town of Middleburgh Automobile Junk Yard Ordinance, and further, all Junkyards, either automobile or other, shall provide for proper fencing, proper distance from highways and other establishments, as provided by Section 136 of the New York State General Municipal Law, and shall be licensed annually by the Town of Middleburgh for a fee set by the Town Board.

- B.** The above shall include a combination of two (2) or more of any of the unregistered or inoperable items listed below but not limited to:
1. Automobiles, including parts.
 2. Recreation vehicles, snowmobiles, motorcycles, all-terrain vehicles, boats.
 3. Campers and Motor Homes
 4. Mobile Homes
 5. Household Appliances and Plumbing Fixtures
 6. And all other items listed in the definition for “Junk/Salvage Yards”
- C.** In addition to any remedies and penalties provided by Section 136 of the State of New York General Municipal Law, enforcement of this Section may also be as provided for in Article XIII and XV herein.
- D. Special Provision Relating to Nonconforming Junkyards.** Any lawfully existing Junkyards in operation prior to the adoption of this Zoning Law and not in conformity with this Section shall continue to operate, but may not expand the amount of land they occupied.

8.14 Horse Stable, Private and Commercial.

A. Private Stables.

1. A private stable is permissible as an accessory use to a single-family residence in any R2 and R3 Zoning District provided it will comply with the following provisions:
 - a) The tract of land on which the house and stable are located is at least 2 ½ acres in size.
 - b) No more than two (2) horses are kept with the exception that one (1) additional horse may be kept for each additional acre of land up to a total maximum of five (5) horses.
 - c) The building shall not exceed four hundred (400) square feet in size of one-to-two-horse stables with an additional two hundred (200) square feet to each additional horse.
 - d) No commercial breeding hire or sale of horses shall be permitted from a private stable.
 - e) All horses shall be restrained from grazing or intruding on an adjoining property and any fences erected for the same shall be at least three (3) feet from the property lines.
 - f) No stable building shall be located within one hundred (100) feet of adjoining property line or private road.
 - g) These provisions are not applicable to commercial stables where permitted.

B. Commercial Horse Stable.

1. A commercial horse stable shall have at least ten (10) horses, \$10,000 in fees/crops annually, livestock and livestock products and be at least seven (7) acres in size.
2. No stable building shall be erected within one hundred fifty (150') feet of any property line.

3. Prior to the establishment of a Commercial Horse Stable operation, a plan describing how manure will either be removed or used from the farm (e.g. by land spreading, composting, or periodic removal) is required.

8.15 Commercial Equine Operation.

- A.** No site preparation or construction shall commence nor shall existing structures be occupied until a final Site Plan approval has been granted by the Planning Board and permits have been issued by all governmental agencies involved.
- B.** The permitted use may include any of the following:
 1. Storage of horse vans for conveying or vanning of horses may be accessory to the principal use.
 2. Sale or rental of horses for use by public by the hour, day, month, or year.
 3. Rides on horses by the public
 4. Rental of horse vans.
 5. Riding lessons to the public.
 6. Sale of horse supplies and/or equipment.
- C.** The land devoted to this use shall not be less than ten (10) contiguous acres.
- D.** One (1) principal single-family dwelling may be located on the land devoted to this use if it complies with the requirements for this Law. The land area on which the principal single-family dwelling is located shall not be considered as part of the land devoted to this use as forth in in paragraph C above.
- E.** The stable shall be located not less than one hundred fifty (150') feet from any boundary line. The storage of manure shall be located on land not less than two hundred (200') feet from any boundary line. The Planning Board may require manure storage areas to be screened and/or buffered from adjacent areas.
- F.** Any riding ring shall be at least one hundred (100') feet from any boundary line.
- G.** Suitable and adequate off-street parking shall be provided in accordance with the requirements established by this Zoning Law and the Planning Board.
- H.** Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining streets and prevent any nuisance to adjoining property.
- I.** The installation and use of exterior loudspeakers shall be conducted in such a manner as to minimize potential nuisances to adjacent properties.

8.16 Farm Worker Housing.

- A.** All Farm Worker Housing installed within the Town of Middleburgh is subject to the following conditions:
1. Site Plan Review and Building Permit Approval.
 2. Review Inspections shall be made at times determined by the Town of Middleburgh Code Enforcement Officer (CEO).
 3. Compliance with Town of Middleburgh Zoning Law, Schoharie County Health Department, and all applicable State and Federal regulations.
- B.** The minimum front, side, and rear setbacks for Farm Worker Housing shall comply with all the setbacks and dimensional requirements established for Zoning District that it is located within.
- C.** The minimum lot width shall be of adequate size to accommodate required separation between the well and the wastewater disposal system. Adequacy of well (if used) to supply anticipated demand and design of wastewater disposal system shall be approved by the Schoharie County Health Department.
- D.** The minimum square foot dimensional requirements for structures used for Farm Worker Housing shall comply with the requirements set forth in the New York State Codes, Rules and Regulations (NYCRR), Title 10, Section 15.6.
- E.** Farm Worker Housing shall not be used, leased, or rented to another person if that person does not have a legal interest established with the individual agricultural operation. The landowner shall certify, on an annual basis, to the Town of Middleburgh Planning Board that the Farm Worker Housing is used for farm labor. All Farm Worker Housing shall be located on a parcel that is under the same ownership as the individual agricultural operation.
- F.** Structures, excluding existing farm structures, utilized for Farm Worker Housing that have not been occupied for that use for a period of three (3) years shall be removed from the property.
- G.** The maximum number of Farm Worker Housing allowed for an individual agricultural operation shall be based on justification of need for the number of dwelling units requested. This justification is to be based on, among other items, full-time employment by one (1) or more persons living as a family in the dwelling unit and deriving their principal income from the individual agricultural operation for which this Use is requested.
- H.** All Farm Worker Housing shall continually comply with all applicable local, state, and federal building codes, rules and regulations, including Health Department, Agriculture and Markets, H2A requirements, property maintenance codes and standards. All Manufactured Homes used for Farm Worker Housing shall follow applicable HUD construction and safety standards in effect at the time of manufacture or shall be inspected and approved by the Code Enforcement Officer to ensure the premises are structurally sound and free of heating and electrical system defects.
- I.** All Farm Worker Housing shall have adequate access to a public highway. To the extent possible, this access shall be combined with the primary agricultural operation and any other driveways for all other Farm Worker Housing associated with said agricultural operation.

- J.** All Farm Worker Housing shall have a designate area for parking of at least one (1) vehicle per Farm Worker Housing unit. This parking area shall be located adjacent to, or within one hundred feet (100') from, the main entrance to each Farm Worker Housing Unit. All such parking area(s) shall be adequately screened or buffered from existing dwelling units or adjacent residential zoned land.
- K.** All Farm Worker Housing shall be located on that portion of an actively farmed site which the Planning Board determines would cause the least disruption to the continued farming operations. The basis for this determination will include an overall Site Plan identifying the land needed for production and the land needed in support of said production.
- L.** All Farm Worker Housing shall be anchored to a concrete pad or attached to a building foundation.
- M.** No structure for Farm Worker Housing may be sold separately from the entire farm unless one (1) or more lots are created without the necessity of a variance, which meet all other requirements of this Law, including density, dimensions, the Town of Middleburgh Subdivision Regulations for single family residences, and the Schoharie County Health regulations for water and septic systems.
- N.** Whenever possible, converting existing farm structures to housing for farm workers should be considered, understanding that all building codes must be followed.
- O.** In issuing a Site Plan approval for this use, the Planning Board shall set forth terms for removal of the structures in the event the use ceases.
- P.** The requirements contained herein providing Site Plan Review for Farm Worker Housing to protect the general health, safety, and welfare of the citizens of the Town of Middleburgh shall not be construed to unreasonably restrict farm structures or farm practices in contravention of the applicable provisions of the Agriculture and Markets Law of the State of New York.

8.17 Kennel, Commercial.

- A.** The Planning Board shall review any such proposed use to determine that it will not adversely affect the existing character of the neighborhood or surrounding area. The Planning Board shall review any application for such use according to the following:
 1. The required minimum lot size for all kennels shall be a minimum of five (5) acres.
 2. All kennels with outdoor exercise pens or kennels shall be located no closer than one hundred fifty (150) feet to any adjoining property line.
 3. Adequate landscaping and/or fencing shall be provided to create a visual, sound, and odor buffer between such facility and adjacent properties.
 4. Adequate provision for the storage and removal of all animal wastes shall be made. No animal waste storage area shall be located within two hundred (200') feet of any residence or street right-of-way.
 5. All outdoor areas used by animals shall be located to the side or rear of the principal building on the site.
 6. The Planning Board shall consider the number, size, breed, and temperament of animals to be sheltered in order to ensure the health, safety, and general welfare of the community and shall impose

reasonable conditions to protect proximate uses, aesthetic impacts, and safety of the animals sheltered. However, the maximum number of adult animals kept for commercial breeding or boarding shall not exceed twenty-five (25).

7. All dogs over six (6) months of age shall be licensed.
8. Buildings in which animals are to be housed shall have adequate provisions for heat, ventilation, and sanitation for proper maintenance of the health of the animal. Enough housing shall be provided to ensure that all animals can be confined inside a building simultaneously.
9. Adequate provisions shall be made for sanitary disposal of animal waste in a manner acceptable to the Department of Health to preclude offensive odors becoming a nuisance. All on-site disposal containers for waste shall be covered and emptied regularly to control odors.
10. All animals being boarded, harbored, or trained in a kennel facility shall be confined indoors during hours of darkness.
11. The Planning Board shall evaluate potential noise impacts and shall require measures to be implemented to minimize negative impacts on adjacent uses which any include sound proofing.
12. The Planning Board may require visual screening of outdoor runs.
13. Inspections
 - a) Prior to commencement of use, the structure shall be inspected by the Code Enforcement Officer and Dog Control Officer for compliance with all applicable laws, ordinances, rules, and regulations.
 - b) The owner/operator shall allow inspections by the Dog Control Officer and Code Enforcement Officer of the operation to insure compliance with all conditions and requirements set forth by the Town of Middleburgh.
 - c) A written report by the Dog Control Officer shall be filed with the Town Clerk.
 - d) Violations shall be corrected within ten (10) days and prior to reinspection.

8.18 Service Establishment (Vehicle & Equipment).

- A. Entrance and exit driveways shall have an unrestricted width of not less than twenty-five (25') feet and not more than thirty (30') feet and shall be located not nearer than ten (10') feet from any property line and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.
- B. No more than six (6) licensed motor vehicles being serviced or repaired shall be stored or parked outdoors for more than forty-eight (48) hours and shall be in areas effectively screened from all property lines. All such vehicles and equipment shall be stored in a neat, orderly manner.
- C. The Planning Board may limit hours of operation or limit acceptable hours where a Service Establishment (Vehicle & Equipment) is adjacent to residential uses, provided however, that nothing herein contained shall prevent the operator of such facility from providing, at any hour, emergency service in the event of accident or other emergency. The owner of a Service Establishment (Vehicle &

Equipment) may perform work on vehicles/equipment owned by him or her at any hour, provided such work does not violate any other Town, State, or Federal laws, rules, or codes.

- D.** No such establishment shall be located within two hundred (200') feet of a residence, cemetery, school, church, hospital, nursing home, senior citizen housing, or other place of public assembly designed for occupancy by more than fifty (50) persons. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- E.** A buffer strip shall be established, as determined by Site Plan Review, along a side or rear property line facing any of the uses listed in D, above.
- F.** The entire area of the site traveled by motor vehicles or used for display shall be hard surfaced, as defined herein.
- G.** All service or repair of motor vehicles, other than such minor servicing as change of tires shall be conducted in a building fully enclosed on all sides. This requirement shall not be construed to mean that doors to any repair shop must always be kept closed.
- H.** No more than two (2) motor vehicles shall be offered for sale on the premises at any one time. If additional vehicles are offered for sale, the operator shall obtain a Special Use Permit for Retail Establishments (Vehicle & Equipment).
- I.** All motor vehicle parts or partially dismantled motor vehicles shall be stored inside an enclosed building, or in a hard-surfaced area designated by the Town Planning Board in its decision, establishing the number of vehicles or quantity of parts to be stored.
- J.** No new Service Establishment (Vehicle & Equipment) shall be conducted in any building attached to a dwelling.

8.19 Retail Establishment (Vehicle & Equipment).

- A.** Such sales may be conducted either in a fully enclosed building located on the same lot, or in an unenclosed area.
- B.** All Vehicles and Equipment offered for sale or rent shall be displayed in a neat and orderly manner.
- C.** All motorized vehicles displayed on a lot shall always be in proper working order and shall have a valid Motor Vehicle Registration or Title.
- D.** The entire surface of the site to be traveled by motor vehicles shall be hard surfaced.
- E.** No retail sales of fuels shall occur on the site at any time.
- F.** Repair of Motor Vehicles on site is prohibited unless the provisions found in Section 8.18 Service Establishments (Vehicle & Equipment) are complied with in full. In such case where two (2) different specifications are listed, the greater dimension will apply.
- G.** No such establishment shall be located within two hundred (200') feet of a residence, cemetery, school, church, hospital, nursing home or senior citizen housing. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.

H. The Planning Board may limit the number of vehicles for sale, to protect the community character.

8.20 Self-Storage Facility.

- A.** The lot size shall be a minimum of two (2) acres and a maximum of five (5) acres. The total area covered by buildings shall not exceed seventy percent (70%) of the site.
- B.** No self-storage facility shall be no closer than two hundred (200') feet to any residential zoned or developed property.
- C.** Vehicle access shall be designed to accommodate auto, van, light-duty trucks and other two-axle vehicles. Internal site circulation lanes shall be adequate in dimensional cross-section, width and turning radii, where applicable, to provide for the maneuverability of fire trucks. Adequate access shall be determined by the Planning Board in consultation with the Highway Superintendent and Fire Districts.
- D.** The building spacing must allow for a fire apparatus access lane as required by the New York State Building Code and be designed according to AASHTO standards to accommodate all types of vehicles maneuvering through the entire site.
- E.** The maximum height of the building is twenty (20') feet or one (1) story.
- F.** Electrical service to individual units must be for lighting and climate control only. Electrical outlets shall not be provided in individual units.
- G.** Landscaping shall meet the landscaping requirements of Section 7.3, Landscape and Screening.
- H.** Perimeter fencing, security fencing, and entry gates shall be constructed of attractive materials that are compatible with the design and materials used throughout the site. Acceptable fencing types include masonry, decorative metal, wrought iron, with regular recesses and centers to break up long stretches, are encouraged. Barbed wire, stockade fencing, cinder block, and precast concrete fencing are prohibited.
- I.** Unit doors shall be screened or sited, so they are not visible from the street or residential properties to the maximum extent practicable and shall be integrated into the overall design theme of the site through color and texture.
- J.** The roof shape and materials shall be pitched and compatible with the design and materials of neighboring buildings and shall meet design and siting requirement as set forth in Article VII, of this Law. Flat roofs are permitted with a minimum pitch of 3 on 12.
- K.** All parking shall be to the rear of the building or to the side, and if on the side, must be adequately screened.
- L.** Storage units shall not be used for the servicing or repair of motor vehicles, boats, recreational vehicles, motorcycles, trailers, lawn mowers, and other similar equipment; or for office, retail, manufacturing, or other similar uses.
- M.** No activities such as miscellaneous or garage sales shall be conducted on the premises. However, the owner shall have the ability to have a sale for foreclosure purposes.

- N. All storage uses shall be inside an enclosed building. No outside storage is permitted.
- O. All outdoor dumpsters shall be screened.
- P. No overnight parking is allowed outside the storage units.
- Q. Night lighting and security lighting shall be sensitively designed to ensure no off-site glare is directed to neighboring parcels and that the overall intensity of the site lighting is not excessive.
- R. Excessive night security lighting is discouraged, and other security measures shall be considered.
- S. Building mounted scones shall be used instead of freestanding light poles wherever possible.
- T. Storage of gasoline and similar petroleum products, radioactive materials, explosives, and flammable or hazardous materials shall be prohibited. The operator of the self-storage center shall include a provision to this effect in any lease used to rent the storage units and shall post notices to such effect at places likely to be seen, or both.

8.21 Temporary Storage Units (Portable Outdoor Storage Units PODS).

- A. *Purpose and Intent.* The following regulation has been adopted to ensure that placement of Temporary Storage Units, commonly known as PODs (portable on-demand storage), complies with the health, safety, and aesthetic objectives of the Town.
- B. *Placement.* Temporary Storage Units may be placed on property in any zone and no permit shall be required and no zoning regulations shall apply other than those enumerated in this Section.
- C. *Duration.* A Temporary Storage Unit may be placed on property in any zone for a period of thirty (30) consecutive days without a fee. Then only one (1) extension may be granted for an additional thirty (30) consecutive days by the Code Enforcement Officer for a fee set by the Town Board.
- D. *Location.*
 - 1. The Temporary Storage Unit shall be placed in the least conspicuous location available to minimize disturbance to any adjoining residential properties.
 - 2. The Temporary Storage Unit shall not be in any public right-of-way.
 - 3. The Temporary Storage Unit shall not be in any front yard, unless it is the only practical location.
 - 4. The Temporary Storage Unit shall not be in or impede the use of any shared parking area, loading area, aisle, or driveway.
- E. *Number of Units.* Only one (1) Temporary Storage Unit may be placed at any residential property at one (1) time.
- F. *Other Conditions.* The applicant, as well as the supplier, shall be responsible for ensuring that the Temporary Storage Unit is maintained in good condition, free from evidence of deterioration, weathering, discoloration, graffiti, rust, ripping, tearing, or other holes or breaks at all times.

- G.** No Temporary Storage Unit shall be used to store solid waste, construction debris, demolition debris, recyclable materials, business inventory, commercial goods, or goods for property other than at the residential property where the Temporary Storage Unit is located or any other illegal hazardous material. Upon reasonable notice to the applicant, the Town of Middleburgh may inspect the contents of any Temporary Storage Unit at any reasonable time to ensure it is not being used to store said materials. At no time shall a Temporary Storage Unit be used for any of these purposes or used for advertising purposes.
- H.** *Occupancy of Container Prohibited.* No human or animal shall occupy any POD except for the express purpose of loading and unloading the container. No heat source of any kind shall be placed in any POD.

8.22 Bed and Breakfast.

- A.** Bed and Breakfasts shall be conducted in single-family owner-occupied dwelling and the principal residence of the operator, where at least one (1) bedroom shall be reserved for the owner's exclusive personal use, within the designated districts in accordance to the District Schedule of Use Regulations and their Certificate of Occupancy shall so stipulate.
- B.** A Bed and Breakfast may have at least three (3) bedrooms but not more than five (5) bedrooms for guests and may accommodate no more than ten (10) transient lodgers at any one (1) time.
- C.** The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character or shall any extensions for additions to the dwelling be made for the purpose for renting such space for overnight accommodations.
- D.** Outbuildings detached from the principal dwelling shall not be used for the purpose of a Bed and Breakfast establishment.
- E.** No Bed and Breakfast establishment shall be permitted where access is provided by a shared driveway.
- F.** No Bed and Breakfast establishment shall be permitted in an individual Manufactured Home or Manufactured Home Park.
- G.** The establishment may offer breakfast, but only to registered lodgers. A public dining room and/or bar is prohibited.
- H.** No food preparation or cooking for guests shall be conducted within any bedroom made available to guests.
- I.** Unless otherwise allowed by the Planning Board, off-street parking shall not be in the front yard and shall be screened from roads and adjacent properties to provide no variation from the residential character of the site. Off-Street Parking spaces for members of the owner's family residing in the dwelling unit as well as one (1) parking space per guest room shall be provided.
- J.** Each Bed and Breakfast shall be established, maintained, and operated to preserve and complement the residential character and integrity of the surrounding area.
- K.** No guest shall occupy the premises more than fourteen (14) days within any thirty (30) day period.

- L.** The Bed and Breakfast shall always be maintained and operated to comply with the New York State Uniform Fire Prevention and Building Code and the rules and regulations promulgated there under, as amended including furnishing of smoke alarms, carbon monoxide detectors, and exit signs.
- M.** Water and Sewage disposal shall meet all applicable requirements of the Town, County, and the State Departments of Health and Environmental Conservation.

8.23 Car Wash.

- A.** This Section applies to any Car Wash established as a permanent use. This Section does not apply to temporary car washing activities sponsored by schools, churches, or other nonprofit organizations or groups to raise money for designated events.
- B.** No building, parking, or service area shall be closer than one hundred (100') feet to any existing residential structure.
- C.** Ingress and egress shall be so designed as to minimize traffic congestion, and for this purpose, the number and location of driveways shall be subject to the explicit approval of the Planning Board.
- D.** In addition to meeting any off-street parking requirements of this Law, any Car Wash may provide a minimum of four (4) stacking spaces per bay on the lot, after review and discussion with Planning Board.
- E.** As part of Site Plan approval for Car Washes, evidence of an adequate long-term source of public or private water shall be submitted to show water usage will not affect surrounding properties.
- F.** Water Recycling. All Car Wash installations shall be equipped with a system for recycling water and shall be required to reclaim and reuse as much water as practicable.
- G.** Premises shall not be used for the sale, rent, or display of automobiles, trailers, mobile homes, boats, or other vehicles unless one (1) of these uses is the permitted principal use on the lot and the Car Wash is an accessory use to that principal use.
- H.** The Planning Board shall review the hours of operation and has the authority to limit the hours of operation to prevent noise and light glare from becoming a nuisance upon any adjacent residential use.
- I.** All entrance and exit lanes and parking areas shall be surfaced with an asphalt or Portland cement pavement to provide a durable and dustless surface and shall be graded and drained as to dispose of all drainage water in a manner that does not adversely impact adjacent properties, uses, abutting roadways or water quality.

8.24 Public Utilities and Essential Services (Except for Telecommunication Facilities).

This Law is not intended to restrict the construction or use of underground or overhead Public Utility distribution facilities or of other Public Utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected. Telecommunications Facilities are considered Public Utilities when needed by a licensed Public Utility and the Town of

Middleburgh recognizes the need for such services. However, Telecommunications Facilities require a Special Use Permit as outlined in Article VIII, Section 8.6.

- A.** Essential Services and Utilities, except for Telecommunication Facilities, may be allowed through Site Plan Review in all Districts by the Planning Board.
- B.** The Planning Board shall determine the following prior to approving a Site Plan:
 - 1. The proposed installation in a specific location is necessary and convenient for the efficiency of the essential services or the satisfactory and convenient provision of service to the area in which the particular use is located.
 - 2. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the District in which it is to be located.
 - 3. Adequate landscaping will be provided to create visual and sound buffer between such facilities and adjacent property.
 - 4. All new and replacement electrical distribution, telephone, cable TV and other lines shall be placed underground, if practical, as determined by topography of the site by the Planning Board during Site Plan Review.
 - 5. All service connections from distribution lines to consumers shall be placed underground, if practical, as determined by topography of the site by the Planning Board during Site Plan Review.
 - 6. All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each ten (10) feet from each other at any point; also, no transformer or associated switches shall be closer than one hundred (100') feet from any lot lines.
 - 7. Adequate off-street parking shall be provided.
 - 8. Adequate and attractive fences and other safety devices will be provided.

8.25 Camps and Campgrounds.

- A.** A Campground shall have a gross area of at least fifteen (15) contiguous acres of land in single ownership or under unified control.
- B.** The density of campsites shall be a maximum of four (4) per acre. The density of campsites shall be calculated on a net basis using only the acreage on the parcel that is eligible and available to be used for campsites. The applicant shall submit documentation to the Planning Board that there is water and sewer capacity to accommodate the requested number of campsites, and that traffic related to the Campground will not adversely impact local roads or create traffic hazards or congestion. No Campground shall exceed a total of one hundred-fifty (150) campsites.

- C.** No Recreational Vehicle or tent site shall be located closer than one hundred (100') feet to the street right-of-way or any adjacent property line and must be buffered by vegetative screening.
- D.** There shall be screening approved by the Planning Board and placed between the Campground and any adjacent residential property. All approved screening shall be maintained after placement by the Campground operator. The Planning Board may require a minimum tree caliper at the time of planting to ensure effective screening. Screening shall be such that balances the need for maximum screening if adjacent to residences with minimizing blocking views of the Schoharie Valley.
- E.** Common use areas for operational facilities may be provided, including but not limited to picnic pavilions, baseball fields, volleyball courts, basketball courts, hiking trails, docks, and other similar facilities.
- F.** No person shall burn trash, garbage, or other like refuse on any Campsite. All such refuse shall be placed and kept in fly-tight receptacles for the same, which shall be provided by the owners of the campsites. No owner or occupant shall permit the accumulation of litter or refuse or junk vehicles on a campsite. All refuse receptacles shall be emptied on a regular basis.
- G.** Picnic tables, benches, and similar items of personal property may be placed on a campsite. All such items shall be removed at the end of the camping season. All personal property on a Campground shall be maintained and in good condition so as not to become unsightly.
- H.** One (1) off-street parking space shall be provided for each campsite, in addition to the area provided on each site for placement of the Recreational Vehicle or tent.
- I.** Entrances and exits to Campgrounds or Recreational Vehicle Campgrounds shall be designed for safe and convenient movement of traffic into and out of the facility and to minimize marginal friction with free movement of traffic on adjacent streets. All traffic into or out of the Campground shall be through such entrances and exits, which shall be limited to a maximum of two (2) each except where safety demands, and the Planning Board has approved the same. The radii of curbs and pavements at intersections shall be such as to facilitate easy turning movement for vehicles with trailer attached. No intersection of an entrance and/or exit with a State, County, or Town street shall be located where less than five hundred (500') feet of sight distance exists in either direction along the State, County, or Town Highway. The Planning Board shall pay attention to road access and safety during Site Plan Review.
- J.** The Campground shall be serviced by a municipal or approved private water and sanitary sewage disposal system, reviewed and permitted as per New York State Department of Health requirements and consistent with any other local or County laws.
- K.** No Recreational Vehicle shall be parked on any street or roadway within the development.
- L.** No animals shall be kept or maintained on any campsite, except the usual household pets (cats, dogs, and the like). Pets shall be confined so as not to become a nuisance.
- M.** No noxious or offensive activities or nuisances shall be permitted on any campsite or anywhere within such developments. Such nuisances shall include, but not be limited to; (1) noise which exceeds 55 decibels as measured from the property boundary lines; (2)

uncontrolled fires or repeated burning (except for camp fires) which results in soot, cinders, smoke, noxious fumes, gases, or unusual odors emanating beyond the property lines of the development; and (3) any other activity that would exceed the limitations of the Town of Middleburgh Code. Responsibility of meeting such requirements shall extend in all circumstances to individual occupants of campsites as well as campsite managers.

1. No loudspeaker, public address system or amplifying device shall be permitted in connection with any Campground, which can be heard beyond the bounds of the property lot where the use is located. There shall be no music after 10PM.
 2. There shall be no fires at the Campground after midnight. The Planning Board may require shared campfire areas for the Campground and may limit the number of other fire pits to limit smoke and odor impact. Fire pits and shared campfire areas shall be placed at the maximum distance away from Town residences.
 3. Fireworks and discharge of firearms are expressly prohibited.
- N.** No owner or occupant of any individual campsite within the Campground shall permit or allow the dumping or placement of any sanitary or other waste anywhere within the development, except in places designated therefor. No outside toilets shall be erected or maintained on any individual campsite within the Campground. Plumbing fixtures within any Recreational Vehicle placed upon sites in the Campground shall use the sewage disposal system as provided for the development.
- O.** No parking, loading, or maneuvering shall be permitted on any public street, sidewalk, required buffer, or right-of-way, nor on any private grounds nor part of the Campground unless the owner has given written permission for such use.
- P.** No tent site or Recreational Vehicle site shall be designed or used for permanent or year-round occupancy. All Recreational Vehicles in the Campground shall always be maintained in a transportable condition. No permanent roofs, decks or other structures shall be attached to any Recreational Vehicle. Any action toward removal of wheels or to attach the Recreational Vehicle to the ground for stabilization purposes is prohibited. Moreover, no campsite shall be occupied for more than one hundred eight (180) days (typically May 1 through October 31). No Campground shall be the primary and principal residence of any occupant. Each campsite shall be used and occupied (except for occasional guests) for camping and recreational purposes only by a single household.
- Q.** The management of every Campground shall be responsible for maintaining accurate records concerning the occupancy of all sites. The Town Code Enforcement Officer shall have access to, and the right to inspect under normal procedures for such inspections by the Code Enforcement Officer, records for evidence of permanent residency or lack thereof. The Town Board and/or Code Enforcement Officer shall, in addition, have the authority, when any provision of this Section is violated, to prohibit occupancy of any and all campsites until the owners and/or management provide evidence of compliance with these provisions.
- R.** All internal streets shall be a minimum twelve (12') feet in width. All roadways and public parking areas shall either be paved, or dust treated.

- S. Exterior lighting for the convenience and safety of campers shall meet all the requirements of the Town of Middleburgh Land Use Law and shall be fully shielded and directed downward to prevent light trespass beyond the property boundary line. A lighting plot plan shall be prepared as part of the Site Plan Review of a Campground. Outdoor lighting shall be minimized as much as possible. Where pathway safety lighting is required, low three foot (3') high lighting bollards shall be used. No sports field lighting shall be allowed.
- T. There shall be no Commercial Recreational Vehicles sales associated with the Campground.
- U. No storage of Recreational Vehicles shall be allowed beyond the one hundred-eighty (180) days allowed for the camping season.
- V. A Campground may also include areas for musical and similar entertainment events that are also open to the public, provided such uses are occasional in nature and clearly accessory to the Campground as the principal use of the property.
- W. All applicable sanitation standards promulgated by the State of New York, County of Schoharie, and Town of Middleburgh shall be met.
- X. Every Campground shall be accessible by fire and emergency equipment and shall be maintained in such condition, free of obstacles to access. The Planning Board shall consult with emergency services prior to Site Plan and Special Use approval to ensure emergency access.
- Y. The operation standards contained in this Section shall be incorporated in the management plan and shall be approved by the Planning Board in its review of site development plans for the Campground. A plan or set of restrictions that does not adequately provide for conformance with this Section shall not be approved. The plan and/or restrictions shall also provide the Town with the option (but not obligation) of being part of their enforcement and include a right for the Town to periodically inspect under normal procedures for such inspections by the Code Enforcement Officer, the development for continued compliance with the plan and/or restrictions.
- Z. No permanent dwelling shall be permitted except for one (1) dwelling to be used by the owner or resident manager of the Campground.
- AA. Electric service and connections. All such connections and service outlets shall be weatherproofed and shall be of the type approved by the New York Board of Fire Underwriters.

8.25.1 Licenses and Fees.

- A. No person, partnership, association limited liability or other company or corporation, being the owner, user, operator, or occupant of any land within the Town of Middleburgh, shall use or allow the use of such land for transient camping activity or other form of camping regulated herein unless a license has been obtained herein.
- B. The Town Code Enforcement Officer of the Town of Middleburgh shall issue a license after approval of the application by the Town Planning Board pursuant to Special Use procedures. Such application shall be also subject to Site Plan Review to be processed in coincident with

the Special Use Process. Said license shall be effective from the date of issuance until surrendered by the licensee or revoked by the Code Enforcement Officer.

- C. No license shall be issued until the Code Enforcement Officer has received written application from the applicant, the required fee as herein provided and approval of the application, plans and specifications by the Schoharie County Department of health.
- D. All licenses issued hereunder shall be valid until May 31 of the following year. No later than January 1 of each year, applicants shall request or apply for renewal of such licenses. The Town Code Enforcement Officer shall inspect the premises to ensure continued compliance with this Section. A finding of such compliance shall entitle the applicant to an automatic renewal subject only to such fees as may be required as per a Town of Middleburgh Fee Schedule adopted by the Town Board. However, the Town Planning Board shall, subject to a public hearing, approve, disapprove or approve with modifications any renewal that involves proposed changes in the facilities or major changes in the operations connected with the Campground.
- E. Any increase in the number of campsites shall be approved by the Planning Board and licensed by the Code Enforcement Officer.
- F. Each application for a new supplemental Campground license shall be in writing and signed by the applicant. The Code Enforcement Officer shall promptly transmit copies of the application and plans to the Town Planning Board, which shall review the application pursuant to the Special Use Permit and Site Plan Review requirements herein. The Code Enforcement Officer, within thirty (30) days of the filing of the Planning Board's action with respect to Special Use Permit and Site Plan Review, shall issue the license. Each license shall be accompanied by Site Plans and other data as shall be required herein for Special Use Permit and Site Plan Review applications.
- G. The applicant, for any new license or transfer, shall pay the Town fee as may be established by resolution of the Town Board.

8.25.2 Revocation of License.

- A. If the Code Enforcement Officer finds that a Campground for which a license has been issued is not being maintained in a clean and sanitary condition or is not being operated in accordance with the provisions of this Section, he or she may service personally or by certified mail upon the holder of the license a written order which will require the holder of the license to correct the conditions specified in such order within ten (10) days after the service of such order.
- B. If the holder of such license shall refuse or fail to correct the condition or conditions specified in such order, the Code Enforcement Officer shall revoke such license and the holder of the license shall thereupon immediately terminate the operation of such Campground and held to be in violation of this Law.
- C. However, if the owner or operator of such Campground shall thereafter correct such conditions and bring the Campground into compliance with this Section, such owner may then apply for issuance of a new license for such Campground.

8.26 Home Occupation.

A. General Standards for All Home Occupations. The following standards apply to all Home Occupations:

1. The Home Occupation shall be clearly incidental and secondary to the use of the lot for residential purposes.
2. The off-premise impact of noise, vibration, dust, electrical disturbance, odors, heat or glare shall be no greater than that produced by a typical single-family residence in the neighborhood. The use of substances which may endanger public health and safety or that pollute the air or waters are prohibited.
3. Traffic generated shall not be in greater volume than would normally be expected in the neighborhood. In determining traffic conditions, the Planning Board shall consider the character of the road on which the use is located and the volume of traffic that would otherwise be generated by a typical residential use.
4. The Home Occupation is allowed in a residential setting because it does not compromise the residential character of an area, does not generate conspicuous traffic, does not visually call unusual attention to the home, and does not generate noise of a nonresidential level.
5. The Home Occupation shall be conducted entirely within a principal dwelling or permitted accessory structure. An accessory structure shall include permitted customary structures provided in this Law and may include the reuse of a barn or other accessory structure constructed prior to the date of adoption of this Law.
6. No generation of noise, vibration, smoke, dust, electrical disturbance, or odors, heat, or glare shall be perceptible beyond the property line.
7. No residence shall include more than two (2) Home Occupations.
8. The Home Occupation is carried on by a member of the family residing in the dwelling unit.
9. No more than five hundred (500) square feet of floor area of the dwelling unit or thirty percent (30%) of the total floor area of the dwelling unit shall be utilized for the Home Occupation activities, whichever is lesser. Floor area requirements refer only to heated habitable rooms within the dwelling unit.
10. All parking shall be provided off-street and shall not be located within the front setback area unless it is screened from public view.
11. Storage of goods, materials, equipment, vehicles, or other supplies associated with the Home Occupation shall be in an enclosed structure or screened from the road and from other properties.
12. Signs are permitted for Home Occupation's. Please see Section 7.7 of this Zoning Law for requirements.
13. The appearance shall be residential in design.

14. Home Occupation includes, but not limited to, the following: a licensed day care in an owner-occupied dwelling, art studio, dressmaker, barbershops, beauty parlors, indoor storage, carpenter, electrician, plumber, professional office of a physician, dentist, lawyer, engineer, architect, or accountant. Home Occupation does not include kennels, motor vehicle services or restaurants.

B. Minor Home Occupation.

1. Only the person or persons who occupy the dwelling may be employed by the Minor Home Occupation at any one (1) time.
2. There shall be no exterior storage of materials to be used in conjunction with the Home Occupation.
3. There shall be no heavy earth moving equipment, tractor trailers, or other similar specialized vehicles upon the property utilized for the Home Occupation.

C. Major Home Occupations.

Permitted Major Home Occupations as defined in this Law include activities that meet the standards in Subsection A above and are permitted to have a limited number of employees and client visits to the residence. Special Use Permit review from the Planning Board shall be required for all Major Home Occupations. The following standards apply to Major Home Occupations:

1. No more than two (2) nonresident employees shall be permitted at any one time.
2. Adequate parking shall be provided off-street for all home occupants, employees, and customer so as not to cause parking congestion or a visual disturbance to the character of the neighborhood.

8.27 Laundromat/Dry Cleaner/ Laundry Commercial.

A. A Dry-Cleaning Facility shall meet all the requirements of 6NYCRR Part 232 (Perchloroethylene Dry Cleaning Facilities) prior to the issuance of a Special Use Permit.

B. All Laundromat or Commercial Laundry Facilities shall:

1. Ensure that an adequate water supply exists to meet the needed capacity. The Planning Board may require additional water capacity testing both on and off-premise to ensure adequate water exists and that such use does not impact nearby wells.
2. Ensure that use of large quantities of water from a well on premise does not negatively impact water capacity from nearby wells.
3. Provide engineered plans for on-site waste water treatment to ensure adequate treatment of water used in the facility and that discharges to streams, wetlands, floodplains, or groundwater are prevented.

8.28 Farm Stands and District Marketing Operations.

A. Applicability and Purpose. Temporary Farm Stands such as those conducted from a vehicle or other moveable wagon or structure are allowed. Temporary Farm Stands do not require a Site Plan Review or a Special Use Permit. They may require other approvals not covered by this Law (for example a Vendor's Permit). The retail portion of the farm operation not more than five hundred (500) square feet in size and located at least twenty (20') feet from all property lines and road rights of way are permitted by right in all locations of the Town. Farm-related businesses that are conducted outside the primary farm business such as equipment sales, and retail portions of farm operations larger than five hundred (500) square feet shall require a Site Plan Review.

B. Standards.

1. All applicable signage requirements of Section 7.7, Signs of this Law must be met. Off-Street Parking shall be provided for all employees and customers.
2. Safe ingress and egress from the farm or roadside stand shall be required.
3. No Farm Stand and/or District Marketing Operations shall do business in a location that will impede sight lines, cause traffic congestion, create a parking hazard, or prevent access to a driveway or road.

8.29 Small-Scale Ag. Processing Facility and Small-Scale Meat Packing Facility.

A. Small-Scale Agricultural Processing Facility.

1. Purpose. This Section establishes performance standards for Small-Scale Agricultural Processing Facilities to support agricultural production and facilitate start-up operations, while ensuring neighborhood capability and minimizing potential for environmental impacts. Where allowed by Schedule 2, Schedule of Uses, a Small-Scale Agricultural Processing Facility may be permitted with a Site Plan Review and/or Special Use Permit Review when documentation is provided and that all the performance standards set forth in Section 3 are met.
2. Applicability. Small-Scale Agricultural Processing Facilities shall be permitted in the R-3, C, and CLI Zoning Districts. Small-scale agricultural processing does not include processing operations that produce alcoholic or cannabis products or involve animal slaughter and/or meat cutting and packing. Small-Scale Agricultural Processing does not include cottage food operations which are defined separately and are an allowed use within a primary residence.
3. Performance Standards. Small-Scale Agricultural Processing Facilities shall comply with the following standards in addition to the requirements of the Site Plan Review/Special Use Permit Review Process and other applicable regulations of this Law.
 - a) Minimum Parcel Size/Maximum Size Thresholds. Small-Scale Agricultural Processing Facilities up to three thousand (3,000) square feet must be located on a parcel of at least two (2) acres in size; and up to five thousand (5,000) square feet on parcels five (5) acres or Greater.

- b) Number of Facilities. No more than one (1) Small-Scale Agricultural Processing Facility may be approved per contiguous ownership.
- c) Square Footage Limitations. All Small-Scale Agricultural Processing activities shall be conducted inside a building or in covered outdoor areas. The total combined square footage of all such facilities, including buildings and areas where agricultural products are processed, aged, stored, packaged, and areas where equipment is stored and washed, shall not exceed the maximum size thresholds.
- d) Building Permit. Small-Scale Agricultural Processing Facilities require a building permit and shall comply with applicable building codes include requirements for accessibility, restrooms, and washing facilities.
- e) Customer and Site Visitor Management. Educational tours are allowed subject to building code and accessibility requirements.
- f) Compliance with Town, County, other Agency, and Statutory Requirements. The operator shall comply with all applicable building, plumbing, electrical, fire, and hazardous material codes set forth in the New York State Code. The operator shall also comply with all laws and regulations applicable to the type of processing facility proposed and obtain and or comply with all permit, license, approval, inspection, reporting, and operational requirement required by other local, State, and Federal regulatory agencies having jurisdiction over the type of processing operations proposed.
- g) Any structure located on the site shall be a minimum distance of two hundred (200') feet from any existing residential structure.
- h) All outdoor storage areas shall be suitably screened and indicated on the Site Plan.
- i) The applicant must demonstrate that adequate on-site parking is provided so vehicles waiting to load, or unload will not park on public highways.
- j) Periodic inspections by the Code Enforcement Officer shall be permitted by the applicant and/or owner.
- k) Hours of operation shall be demonstrated by the applicant to be limited as necessary to minimize impact on surrounding properties.
- l) The applicant shall submit a route plan to indicate that traffic generated by the facility will have a minimal impact on neighboring streets. Said plan shall state the number and frequency of trips to and from the facility. The applicant shall comply with the Town of Middleburgh Highway Damage Prevention Law, of applicable.
- m) On-street parking of vehicles, containers or any other equipment or materials in any way connected with the facility shall be prohibited.
- n) The Planning Board may incorporate as a condition of issuance of any such permit any safeguards it deems necessary to protect the public health, safety, and welfare.
- o) Water and Septic Systems. The owner shall maintain a properly functioning septic systems which complies with the Department of Health. Any water supply utilized shall conform to the applicable requirements of the Department of Health.

- p) **Waste Management.** A waste management plan addressing storing, handling, and disposing of all waste by-products of the processing activities shall be submitted for review and approval by the Planning Board and any other regulatory agency. This plan should characterize the volumes and types of waste generated, and the operational measures that are proposed to manage and dispose, or reuse the wastes in an environmentally sound manner which does not result in adverse environmental impacts, nuisance complaints, or health hazards.

B. Small-Scale-Meat Packing Facilities.

1. A Small-Scale Meat Packing Facilities shall only be permitted in a Certified Agricultural District in the R-3, C, and CLI Zoning District in the Town of Middleburgh with a Special Use Permit.
2. No person shall operate a Small-Scale Meat Packing Facility unless that person has obtained any and all required State and Federal licenses or permits, including USDA certification, where required.
3. No permit shall be granted for the operation or maintenance of a Small-Scale Meat Packing Facility, in the event such premises or any part thereof shall be within one thousand (1,000) feet from any building used for dwelling, school or church purposes.
4. The parcel on which the facility is located meets the minimum lot area and width requirements of the Zoning District in which it is located.
5. The facility is located along, or with direct access to, and improved section line of roadway or another roadway classified as an arterial. If the arterial roadway is not improved, the developer/operator would be responsible for construction of paving said roadway to Town standards prior to operation of the facility.
6. The parcel on which the facility is located is at least one-quarter (1/4) mile from any residentially zoned property.
7. There shall be a buffer of one hundred feet (100') from the Small-Scale Meat Packing Facility to any property line.
8. A written narrative is submitted describing the operation of the facility, including the number and type of animal processed, the length of any on-site confinement, source of water supply, method of sewage disposal, method of waste disposal, pest management, stormwater management, and odor management.
9. A Site Plan is submitted showing the overall dimensions of the site; existing and proposed roads and access ways within and adjacent to the site; topographic contours with a minimum interval of five (5') feet; surface water, streams, drainage areas and special flood hazard areas on or within five hundred (500') feet of the site; and locations of existing and proposed buildings, fences, loading/unloading areas, outdoor storage areas, wells, sewage treatment system(s), waste management areas, confinement areas (indoor) and parking areas.

10. Disposal of waste shall be in accordance with all applicable state and county laws and regulations. The facility must have all necessary federal and state permits and approvals and comply with all health and safety regulations. This is meant to include, but is not limited to all sewage, processed and unprocessed animal parts, manure, entails, blood, hides, and bones.
11. There shall be no outdoor storage permitted at any time unless on the side or rear of the building, and it is effectively screened by a wooden fence, stone or brick walls, or evergreen trees or shrubs at least six (6) feet high. There shall be no outdoor storage of hides, offal or animal waste. Not outdoor storage shall omit any noxious odors or shall contain any noxious, poisonous, or hazardous substances or odors shall be permitted.
12. No unloading or loading area shall be in the front yard and all loading and unloading areas shall be screened from view from adjacent properties and public streets. All exterior storage areas shall be fenced and fully screened from adjacent property and public streets.
13. The applicant shall submit a route plan to indicate that traffic generated by the facility will have a minimal impact on neighboring streets. Said plan shall state the number and frequency of trips to and from the facility. The applicant shall comply with the Town of Middleburgh Highway Damage Prevention Law, if applicable.
14. A traffic impact analysis may be submitted to determine if any improvement to Town, County or State roadways, including paving of roadways or the installation of turn lanes, is warranted. If warranted, roadway improvements will need to be installed at the operator's expense prior to operation of the facility.
15. Any animal confinement operations in conjunction with the Small-Scale Meat Packing Facility are subject to the County and/or State requirements for animal feeding operations.
16. Animals shall be enclosed in gated enclosures with a minimum height of six (6) feet. Fencing shall always be enough to provide adequate screening and contain animals securely on the property.
17. All windows and outer doors shall be adequately screened.
18. All floors shall be concrete, properly waterproofed or of some material impervious to liquids.
19. The premises shall be properly ventilated as to insure adequate supply of fresh air.
20. The Planning Board may incorporate as a condition of issuance of any such permit any safeguards it deems necessary to protect the public health, safety, and welfare.
21. The length of time for the holding of animals waiting to be slaughtered shall not exceed more than twenty-four (24) hours.
22. Noise exceeding the levels set forth in this Law will not be permitted and shall be deemed a violation of these regulations.

23. Validity of Permit.

- a) Small-Scale Meat Packaging Facilities shall be subject to bi-annual special permit renewal process. All Special Use Permit renewal requests shall be submitted to the Planning Board at least sixty (60) days prior to the expiration of the existing permit.
- b) The Planning Board or its duly authorized agent shall have the authority at reasonable times after the issuance of a permit to inspect the Small-Scale Meat Packaging Facility for which the permit was issued for a purpose of ascertaining that all of the requirements relative thereto are being complied with, In the event the inspection shall disclose any noncompliance which is not properly cured within thirty (30) days, the Planning Board shall have the right to revoke the permit.

C. Exemptions.

This Section shall not apply to:

1. The processing of a person's own animals including transportation in intrastate commerce of the animal's products is allowed without special certification if they are exclusively for use by the owner or members of the owner's household, non-paying guests or employees;
2. The butchering of processing of any wild game taken by permit issued by the New York State Department of Environmental Conservation is a permitted accessory use in all Districts of the Town.

D. Proof of statutory compliance.

Notwithstanding anything to the contrary contained herein, no permission for the operation or maintenance of a Small-Scale Meat Packing Facility, rendering works or establishment shall be granted unless the applicant submits proof of compliance with the Agricultural and Markets Law of the State of New York, the Environmental Conservation Law of the State of New York and the Rules and Regulations of the New York State Department of Health.

8.30 Extraction and Mining.

A. Purpose.

The purpose of this Section is to allow for extractive resource and mining activities to be carried out in harmony with the community and environment in the Commercial Light Industrial (CLI) Zoning District. This is accomplished by requiring that extractive resource and mining activities undergo Site Plan Review as a Special Use, and review under the State Environmental Quality Review Act in coordination with permitting activities of the New York State Department of Environmental Conservation under the New York State Mined Land Reclamation Act (MLRL) or any successor statute.

Any person who mines or proposes to mine from each mine site at least one thousand tons (1,000) tons or seven hundred fifty (750) cubic yards, whichever is less, of minerals, including peat and topsoil within a period of twelve (12) consecutive months, shall be required to obtain a State Mined Land Reclamation Law Permit, along with Site Plan Review and a Special Use Permit. In addition to all other considerations permitted by law to be reviewed, the reviewing board (s) shall have the authority to review the following in relation to any proposed mine:

1. Ingress and egress to the mine on Town or private roads;

2. Routing of trucks through the Town;
3. Dust control and hours of operation;
4. Setbacks from property lines;
5. Visual impacts, screening including vegetative cutting;
6. Off-site vibrations; and
7. Water quality;
8. Other matters related to the State Environmental Quality Review.

B. Special Standards.

The Planning Board shall approve or approve with conditions, the Special Use Permit and Site Plan Review application if the mine or resource extraction activity meets the conditions of the Special Use Permit, and if the mining extraction activity can be carried out in harmony with surrounding land uses and in keeping with the goals of the Comprehensive Plan. In judging impacts, the Boards shall consider all impacts accruing during the life of the mine or resource extraction activity. If the reviewing board determines to grant an application, it may impose:

1. Limitations and restrictions regarding ingress and egress to public thoroughfares controlled by the local government;
2. Limitations and restrictions regarding routing of mineral transport vehicles on roads controlled by the local government;
3. Requirements and conditions as specified in the Mined Land Reclamation Permit issued by the NYS DEC concerning setbacks from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision 3 of Section 23-2711 of the NYS Environmental Conservation Law;
4. Enforcement of reclamation requirements contained in Mined Land Reclamation Permits issued by the NYS DEC.

C. SEQRA Classification.

Application of the NYS Mined Land Reclamation Law and the State Environmental Quality Review Act/ Mines or resource extraction activities needing both a Special Use Permit and New York State Mine Land Reclamation Law permit are hereby classified as Type I actions under the State Environmental Quality Review Act (pursuant to 6 NYCRR, Section 617.4).

D. Preexisting Mines and Resource Extraction Activities.

Any mine that is lawfully in existence on or before the effective date of this Law, and that would otherwise require a Special Use Permit and Site Plan Review hereunder, may continue to operate so long as it is subject to an existing permit under MLRL. Notwithstanding any other provision of this Land Use Law to such permits, a proposed expansion that would increase the number of cubic yards or tons of mined material or expand the MLRL “Life of Mine” area would require a Site Plan approval and a Special Use Permit. Where the Planning Board undertakes Site Plan Review or Special Use Permit Review of a pre-existing mine it shall review both the proposed expansion and the pre-existing aspects of the mine for compliance with the Special Use Permit Provision of this Law, as well as the following:

1. Ingress and egress to the mine;
2. Routing of trucks;
3. Dust control and hours of operation;
4. Setbacks from property lines;
5. Visual impacts, screening including vegetative cutting;
6. Off-site vibrations;
7. Water quality; and
8. Other matters related to the State Environmental Quality Review.

E. Mining and Resource Extraction Do Not Include Natural Gas, Etc. Activities.

In no event shall “excavation” or “mining activities” be construed to mean, be or include Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article XVII, Definitions, of this Law.

8.31 Adult Entertainment Use.

- A.** It is the purpose of this Section to regulate the creation, opening, commencement and/or operation of Adult Use and Entertainment Establishments, as herein defined, in order to achieve the following:
1. To preserve the character and quality of life in the Town of Middleburgh.
 2. To control harmful and adverse secondary effects of adult uses, documented in the Town of Middleburgh Secondary Effects Study, on the surrounding areas such as: decreased property values; parking and traffic problems; increased crime; excess noise, litter and loitering.
 3. To restrict minors’ access to adult uses.
 4. To maintain the general welfare and safety for the Town of Middleburgh’s residents.
- B.** All Adult Entertainment Uses are prohibited in all Zoning Districts in the Town of Middleburgh, except the Commercial Light Industrial (CLI) Zoning District by Special Use Permit and shall comply with the following requirements:
1. No Adult Entertainment Establishment shall be located within the following designated areas:
 - a) Within one thousand (1,000’) feet from nearest boundary line of any Residential District or Residential Use;
 - b) Within one thousand (1,000’) feet from the nearest property lines of any public or private school; any municipal building open to the public; any church or other religious facility; and public park or recreation area and any principal or accessory private recreational facility use or club; and any group day care center, family day care center, nursing home, and hospital.

- c) Within one thousand (1,000') feet from the nearest property line of any other Adult Entertainment Establishment.
- 2. Not more than one (1) Adult Entertainment Use or Adult Business Uses shall be in the same building or upon the same lot or parcel.
- 3. Adult Entertainment Uses shall be on a minimum parcel size of three (3) acres and have a maximum building footprint of five thousand (5,000) square feet.
- 4. All Adult Entertainment Uses shall have a two hundred fifty-foot (250') front setback.
- 5. Screening (minimum height of six (6') feet) of the building containing an Adult Entertainment Use and/or accessory uses from all adjacent roads and all parking lots shall be provided for. Such screening must be an always maintained live vegetated buffer or landscaped fencing.
- 6. An Adult Entertainment Use shall not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.
- 7. The appearance of buildings of Adult Uses shall be consistent with the Commercial Performance Standards of this Law and the appearance of buildings in the adjacent area, and not employ unusual color or building design that would attract attention to the premises.
- 8. There shall be screening of windows and doors to prevent the public's view of the interior from any public or private right-of-way or abutting property.
- 9. Sign content shall identify the name of the establishment only. Only one (1) free standing, non-pole or mounted on the building wall identification sign shall be allowed for an Adult Use and shall not be larger than twelve (12) square feet. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited.
- 10. No pictures, publications, videotapes, movies, covers, or other advertising items that fall within the definition of an adult bookstore, adult motion picture theater/media center, adult paraphernalia store, adult live nudity establishment or adult video store shall be displayed in the windows of, or on the building of, any Adult Entertainment Use Establishment.

8.32 Warehouse and Storage Facility.

- A. All warehouse and storage use shall comply with the following requirements:
 - 1. No more than one (1) principal building shall be permitted on a lot.
 - 2. The warehouse or storage building shall be set back no less than one hundred (100') feet from any lot line.
 - 3. Outdoor Storage and display shall not be permitted in connection with a warehouse or storage facility.
 - 4. No sales to the public shall be permitted.

5. The applicant shall submit a list of the goods and materials to be warehoused or stored on the property. The Planning Board shall consider the nature of the materials, including potential flammable/hazardous nature of the same, and may impose restrictions on the storage of said materials, or prohibit same.
6. The warehouse and storage facility shall conform to the design standards of this this Law.
7. A traffic study addressing both on-site and off-site traffic and circulation impacts is required.

8.33 Brewery/Distillery/Winery/Cidery/Meadery.

- A. Brewery/Distillery/Winery/Cidery/Meadery shall be permitted in the R-3 and C Zoning Districts following Site Plan review and approval by the Planning Board, applying the criterial contained in this Section and elsewhere in this Local Law, as applicable.
- B. Brewery/Distillery/Winery/Cidery/Meadery may include a tasting room and retail sales area as designated on the approved Site Plan.
- C. All improvements located on the subject property shall be designed, constructed, maintained and operated in accordance with the standards of the New York State Building Code and shall always comply with the requirements of the New York State Health Department.
- D. All sanitary facilities shall be built and maintained in accordance with the requirements of the New York State Department of Health and the New York State Department of Environmental Conservation.
- E. All patron activities shall be conducted within the enclosed structures, or on exterior portions of the property specifically designated therefore on the approved Site Plan, and shall be limited to the hours of operation as approved by the Planning Board. In reviewing the exterior portions of the property to be utilized for patron activity, the Planning Board shall consider the proximity of the operation to neighboring residential properties, and the impact of such activities on the peaceful enjoyment of the occupants of such residential property.

8.34 Day-Care or Nursery School Facilities.

- A. **Purpose.** It is the intent of the Town of Middleburgh, consistent with New York State Social Services Law §390, to provide for the child care needs of the residents and those employed in the Town in a way that promotes the public interest while maintaining the essential character of the Town's residential, commercial, and industrial areas. This Section is developed in recognition of the critical need for affordable child care for the Town's working parents. The Town recognizes that the lack of child care alternatives may prevent parents from obtaining gainful employment which fully meets their needs.
- B. **Family Day-Care In-Home.** Family Day-Care In-Home, as defined under “Day-Care Facility” in Article XVII, Definitions, shall be permitted through Site Plan Review in all Residential Districts without special use permit, provided that:
 1. State licensing requirements are met, including those pertaining to building, fire safety, and health codes and that such state license copy shall be on file with the Building Inspector;
 2. Applicable zoning and subdivision standards for residential uses are adhered to in full;

3. All area and bulk regulations follow the Schedule of Area and Bulk Regulations;
4. Signs, if any, conform to the requirements in Article VII.
5. An off-street drop-off/pick-up area and adequate parking shall be provided. A driveway in conformance with Town permit standards shall be sufficient for such purpose;
6. No structural or decorative alteration that will alter the single-family character of an existing residential residence is permitted. Outdoor play equipment is permitted in rear or side yards, but should be contained by fencing from adjacent properties.

C. Day-Care Centers, School-Age Child-Care Facilities and Nursery Schools. A Special Use Permit is required for any Day-Care Center, School-Age Child-Care Facility or Nursery School, as defined in Article XVII, Definition. Day-Care Centers, School-Age Child-Care Facilities and Nursery Schools shall be in compliance with the following and other applicable provisions of this Law:

1. The center, facility or nursery school complies with all general standards of Article X, Special Use Permits, of this Zoning Law. In addition, the licensed day-care provider shall submit a copy of said license and other pertinent documents from the New York State Department of Social Services and, if applicable, the New York State Department of Education.
2. A Site Plan is submitted to the Planning Board for its approval, following the procedures in Article IX, Site Plan Review, of this Zoning Law. For Site Plan approval, Day-Care Centers, School-Age Child-Care Facilities or Nursery Schools shall:
 - a) Comply with Subsection B(1) through (4) of this Section;
 - b) Provide an outdoor play space as specified by New York State Social Services Law § 390, Part 418.8 or subsequent laws. Such area shall be at least 1/4 the square footage of the structure in which the facility is housed, screened from the road from which the center takes access either by the center itself or appropriate landscaping or other methods, and contained, by fence or other means, to prevent conflicts between adjacent properties and the facility's activities;
 - c) Provide adequate parking facilities for the Day-Care Center or Nursery School and provide an off-street pickup and drop-off area either on the driveway or an approved parking area;
 - d) Conform to other requirements, as specified by the Planning Board, to ensure that the center maintains the character of the neighborhood.
3. Day-Care Centers, School-Age Child-Care Facilities and Nursery Schools serving more than twelve (12) children shall have a minimum lot size of ten (10) acres.

8.35 Mixed Use Buildings

In any District allowing for mixed-use buildings, the first-floor frontage space shall predominantly be used only for commercial, non-residential uses. Residential uses shall generally only be allowed on upper floors, or to the rear of a commercial space on the ground floor.

8.36 Aircraft Landing Strip/Heliport

A. Purpose. In order to protect residents from the creation of unsafe airstrip/heliport conditions or nuisances, the following conditions for airstrips/heliports shall be followed:

B. Conditions.

1. Location - Potential aircraft landing strips/heliports shall only be located on property in the R-3 or Commercial Zoning Districts. Aircraft landing strips and heliports shall be located such that they are a minimum of 500 feet from property lines. The sides of aircraft landing strips can be 200 feet from any property line if the landing and takeoff sides are at least 500 feet from property lines.
2. Posted Signs – Aircraft landing strips/heliports shall be posted with signs of sufficient quantity to alert any person entering the area that aircraft may be present.
3. All commercial development proposed to be located on the aircraft landing strip/heliport property must be allowed in that district.
4. Referral to other Agencies - Prior to acting on any aircraft landing strip/heliport permit request, the Planning Board shall request the New York State Department of Transportation Commissioner to review the proposed aircraft landing strip/heliport and make a recommendation in accordance with Section 249 of General Business Law. The Federal Aviation Administration (FAA) is involved in this review process and the applicant should contact or plan to contact the FAA.

C. Permit Requirements. All special use permit/site plan applications for an aircraft landing strip/heliport shall include a description of the type and quantity of aircraft using the facilities, frequency of flights, in addition to all information required for special use permit/site plan review.

ARTICLE IX SITE PLAN REVIEW

1.1 Authority.

Pursuant to the powers granted in Section 274-a and 274-b of Town Law, the Town Board of the Town of Middleburgh hereby authorizes the Planning Board to review and approve, approve with modifications, or disapprove Site Plans for land uses within the Town as designated in accordance with the procedures and standards set forth in this Law.

9.2 Intent and Purpose.

The intent of this Section is to provide regulations governing the applicability, submission requirements, standards for review and design, and due process for Site Plan Review and approval. The intent is to ensure that the development and use of individual parcels of land do not have an adverse effect on adjacent lands or on the character of the community. Such regulations are designed to protect the community from traffic, noise, odor, other forms of pollution, inappropriate design, flooding, excessive soil erosion, so as to ensure the proposed use will be in harmony with the appropriate and orderly development of the District in which it is proposed, and that its impacts can be mitigated by compliance with reasonable conditions. The regulations are also designed to ensure the new development conforms to the Town's planning goals and objectives as expressed in its Comprehensive Plan.

9.3 Applicability of Site Plans.

- A.** All new land use activities within the Town shall require Site Plan Review and approval before being undertaken, except for the uses described in Section 1.6 of this Zoning Law.
- B.** Any person uncertain of the applicability of this Law to a given land use activity may apply in writing to the Code Enforcement Officer for a written jurisdictional determination. Parties with standing that disagree with a determination of the Zoning Officer may request an interpretation from the Planning Board.

9.4 Effect on Existing Uses.

This Article does not apply to uses and structures which are lawfully in existence as of the date this Law becomes effective. Any use which would otherwise be subject to this Law that has been discontinued for a period of twelve (12) consecutive months or more shall be subject to review pursuant to the terms of this Law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been substantially commenced as of the effective date of this Law and fully constructed and completed within one (1) year from the effective date of this Law.

9.5 Procedures; General.

Applicants for Site Plan approval shall follow the procedures related to the Sketch Plan Conference as hereinafter set forth. Applicants must comply with all other procedures and requirements of this Law.

9.6 Sketch Plan.

- A.** A Sketch Plan Conference shall be held between the Planning Board and the applicant prior to the preparation and submission of a formal Site Plan. The intent of such conference is to enable the applicant to inform the Planning Board of his/her proposal prior to the preparation of a detailed Site

Plan, and for the Planning Board to review the basic site design concept, advise the applicant as to the potential problems and concerns, and generally determine the information to be required on the Site Plan. In order to accomplish these objectives; the applicant shall provide the following:

1. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
 2. A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements, and other pertinent features;
 3. A topographic or contour map of adequate scale and detail to show site topography; and
 4. All Site Plans are required to comply with the State Environmental Quality Review Act (SEQRA), and a full or short Environmental Assessment Form will be required.
- C. Waivers. The Planning Board is hereby empowered to waive, when reasonable, any requirements for the approval, approval with modifications or disapproval of Site Plans submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate to a particular Site Plan Review.
1. If the applicant wishes to request a waiver, said request shall be submitted in writing as part of the application. The application shall state fully the grounds of said request.
 2. The Planning Board shall make findings supporting their decision regarding a Waiver.
 3. Waivers shall be made by resolution of the Planning Board. A statement showing the date such Waiver was granted shall be affixed to the final plat.
 4. When granting Waivers, the Planning Board may also impose additional conditions as need to achieve the objectives of the waived requirement(s).
- D. Within thirty (30) days after the Sketch Plan Conference has been held, the Planning Board shall provide the applicant with a list of information to be submitted with the Site Plan application as well as any recommendations that the Planning Board may have with respect to the proposed application.

9.7 Application Requirements for Site Plan Approval.

- A. An application for Site Plan approval shall be made in writing to the Chairman of the Planning Board and shall be accompanied by information contained in the following checklist. The accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said Sketch Plan Conference:
1. Eight (8) copies of the application for Site Plan Review along with, if possible, one (1) digital copy containing all application materials, shall be, submitted in writing, to the Planning Board and include the following information:
 - a) Title of drawing, including the name and address of the applicant and person(s) responsible for the preparation of such drawing.

- b) North arrow, scale, and date.
- c) Accurate boundaries of the parcel plotted to a scale.
- d) All existing watercourses.
- e) Location of mapped floodplain, State and Federal wetlands, and slopes greater than 15% on a parcel, if applicable.
- f) Zoning District of parcel or parcels.
- g) Existing buildings.
- h) Grading and drainage plan, showing existing or proposed contours, rocky outcrops, depth to bedrock, soil characteristics, and watercourses.
- i) Location, design, and type of construction, proposed use and exterior dimensions of all buildings.
- j) Location, design, and type of construction of all parking and loading areas, showing access and egress.
- k) Provision for pedestrian access.
- l) Location of outdoor storage, if any.
- m) Location, design, and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls, and fences.
- n) Description of the method of sewage disposal and location, design, and construction materials of such facilities.
- o) Description of the method of securing public water and location, design, and construction materials of such facilities.
- p) Location of fire and other emergency zones, including the location of fire hydrants.
- q) Location, size, and design and construction materials of all energy distribution facilities, including electrical, gas, and solar energy.
- r) Location, size and design and type of construction for all proposed Signs.
- s) Location and proposed development of all buffer areas, including existing vegetative cover.
- t) An estimated project construction schedule.
- u) Identification and status of all necessary permits from other governmental bodies required for the project's execution.
- v) A floor plan and front elevation of any building or fencing to include details of the areas to be used for offices, manufacturing areas and areas for retail/wholesale operations, including exterior display of products for sale.

- w) A landscaping plan and planting schedule showing existing vegetative cover being retained as well as new plantings.
- x) The locations of all outdoor lighting, including lighting levels and design of lighting fixtures to be utilized, both within the site and at the site's boundaries.
- y) A copy of the deed to the property as most recently filed, and/or a copy of the executed contract of sale.
- z) A copy of each covenant, easement, or deed restriction in effect, or intended to cover all or part of the tract.
- aa) Written offers of easement to the Town of Middleburgh or other public agencies for proposed of stormwater drainage, utility rights-of-way, etc., as needed.
- bb) As applicable, soil logs from on-site borings or test pits, percolation test results, and stormwater runoff calculations.
- cc) As applicable, plans to prevent:
 - 1) The pollution of surface or groundwater;
 - 2) Erosion of soil both during and after construction;
 - 3) Excessive runoff;
 - 4) Excessive raising and lowering of the water table; and
 - 5) Flooding of other properties.
- dd) Other elements integral to the proposed development as considered necessary by the Planning Board.

9.8 Review of Site Plan.

The Planning Board's review of the Site Plan shall include, as appropriate, but is not limited to, the following general considerations:

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, structures, and traffic controls.
2. Location, arrangement, appearance and sufficiency of off-street parking and loading.
3. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
4. Location, arrangement, size, design, and general site compatibility of buildings, lighting, and signs. Signs and lights will be compatible and in scale with the building elements and will not dominate the overall visual impact of the project and neighborhood.

5. Adequacy of drainage and stormwater facilities and plans for continued maintenance of the same.
6. Adequacy of water supply and sewage disposal facilities.
7. Adequacy, type, and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise deterring buffer between applicant's and adjoining lands including maximum retention of existing vegetation.
8. Protection of adjacent neighboring properties against noise, glare, unsightliness, or other objectionable features.
9. Adequacy of fire lanes, other emergency zones, fire hydrants, and water supply for firefighting purposes.
10. Special attention to the adequacy and impact of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding, and erosion.
11. Compatibility of building design with existing characteristic of the neighborhood.
12. Protection of any historic or natural resources.
13. A review of compliance with the intentions of the Comprehensive Plan.
14. For any Site Plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to the Town Law, Section 274-a (6).

9.9 Additional Supporting Materials.

- A. The Planning Board may require the following additional supporting materials to be submitted, depending on the size and potential degree of impact on the Town:
 1. Analysis of fiscal impacts to the Town including projected tax revenues and cost of community services using a methodology in common use; and
 2. A multi-modal traffic impact study and analysis due to the proposals' location in heavy traffic areas. Such study and analysis shall be funded by the applicant, shall be consistent with the Traffic Study Methodology Guidelines published by the New York State Department of Transportation, and shall include:
 - a) The projected number of motor vehicle trips and multi-modal traffic to enter and leave the site, estimated for daily and peak hour traffic levels;
 - b) The proposed multi-modal traffic flow pattern, including vehicular movements at all major intersections, likely to be affected by the proposed use of the site;
 - c) The impact of this multi-modal traffic upon abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall be given; and
 - d) Such other supporting materials as deemed necessary by the Planning Board.

3. A visual impact study that illustrates and evaluates the relationship of proposed new structures or alteration to nearby pre-existing structures in terms of visual character and intensity of use (e.g. scale, materials, color, door, and window size and locations, setbacks, roof and cornice lines, and other major design elements). This study may also require an analysis of visual impacts on neighboring properties from the proposed development and alterations, and of the location and configuration of proposed structures, parking areas, open space, and grade changes, and renderings, and photos.

9.10 Reimbursable Costs.

Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed Site Plan shall be charged to applicant.

9.11 Integration of Procedures.

Whenever the circumstances of proposed development require compliance with either the Special Use Permit procedure in this Law or other requirements of the Town, the Planning Board shall attempt to integrate, as appropriate, Site Plan Review, as required by this Section with the procedural and submission requirements for such other compliance.

9.12 Application for Area Variance.

Where a proposed Site Plan contains one (1) or more features that do not comply with the dimensional regulations of this Law, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to Article XII, Variance and Appeals, without decision or determination by the Code Enforcement Officer.

9.13 County Review.

The Town of Middleburgh Planning Board shall refer for review and recommendation all Site Plan applications that fall within those areas specified under General Municipal Law, Article 12-B, Section 239-m to the Schoharie County Planning Commission prior to taking final action. If the Schoharie County Planning Commission does not respond within thirty (30) days from the time it received a full statement on the referral matter, the Town of Middleburgh Planning Board may act without such report. If the Schoharie County Planning Commission disapproves the proposal or recommends modification of the proposal, the Planning Board shall not act contrary to such disapproval or modification, except by a majority vote plus one (1) of all the members thereof, and after the adoption of a resolution fully setting forth the reasons for such contrary act. Within seven (7) business days after taking final action, the Town of Middleburgh Planning Board shall file a report of the final action with the Schoharie County Planning Commission.

9.14 SEQRA Compliance.

Upon receipt of application materials, it deems to be complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within twenty (20) days of its acceptance of a completed application, EAF, and other supporting materials. Where the proposed action may have a significant adverse impact on the environment, the Planning Board shall issue a Positive Declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for the decision making

in this Law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a Negative Declaration.

9.15 Agricultural Data Statement.

- A.** An Agricultural Data Statement is required where the proposed use is located within five hundred (500') feet of the boundaries of an Agricultural District.
- B.** If an Agricultural Data Statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Site Plan application to the owners of land as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

9.16 Planning Board Action on Site Plan Review.

- A.** Within sixty-two (62) days of the acceptance of a complete application for Site Plan approval, the Planning Board shall render a decision, file said decision with the Town Clerk, and mail such decision to the applicant with a copy to the Code Enforcement Officer. The Planning Board also has the discretion to hold a public hearing on the application if the Planning Board determines that there are factors involved (such as but not limited to potential public controversy, the desirability of input from adjoining property owners or the public at large) that warrants a public hearing. If the Planning Board determines to hold a public hearing, it must be held within sixty-two (62) days of the receipt of a complete application and the decision on the Site Plan must be made within sixty-two (62) days from the close of the public hearing. The time which a decision must be rendered may be extended by mutual consent of the applicant and the Planning Board.
- B.** Compliance with General Municipal Law 239-nn. The Planning Board shall provide notice of any public hearing on a Site Plan to neighboring municipalities if the property is within five hundred (500') feet of an adjacent municipality.
- C.** In approving a Site Plan, with or without modifications, the Planning Board may impose conditions which it considers necessary to protect the health, safety, and welfare of the Town. These conditions may include, but are not limited to, increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting, and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.
- D.** Upon approval of the Site Plan, the Code Enforcement Officer has the authority to issue the Zoning Permit upon completion of the development of the site in strict accordance with the approved Site Plan and any conditions attached thereto.

9.17 Expiration, Change of Use, Revocation, and Enforcement.

- A.** A Site Plan shall expire if the Site Plan or use ceases for more than twelve (12) consecutive months for any reason, if the applicant fails to obtain the necessary Building Permit or Certificate of Compliance or fails to comply with the conditions of the Site Plan, or if its time limit expires without renewal. The Planning Board shall have the authority to extend a Site Plan prior to expiration if the Site Plan is still in compliance with this Law.

- B.** A Site Plan shall apply to the use for which it has been granted, as well as to any subsequent similar use of property which complies with all terms and conditions of the Site Plan (as determined by the Code Enforcement Officer issuing a Zoning Permit or Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Site Plan shall require the granting of a new Site Plan or an amendment.
- C.** A Site Plan approval may be revoked by the Planning Board if the applicant or applicant's successor or assign violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
- D.** Any violation of the conditions of a Site Plan shall be deemed a violation of this Law and shall be subject to enforcement action as provided herein.

9.18 Findings Required.

In approving or disapproving Site Plans, the Planning Board shall take into consideration the type, scale, and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses and the requirements and purposes of this Law. The Planning Board shall set forth its findings in writing as part of its decision-making process.

9.19 Amendments.

The terms and conditions of any Site Plan approval may be amended in the same manner as required to approve a Site Plan, following the criteria and procedure in this Article. Any enlargements, alterations, or construction of accessory structures not previously approved shall require a Site Plan Amendment.

9.20 Performance Guarantee Options.

- A.** After the granting of Site Plan approval, no Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed or a significant performance guarantee has been provided by the applicant for improvements not yet completed. The Planning Board may require that the applicant enter into one (1) of the following agreements with the Town:
 - 1. Furnish a bond executed by a surety bond company equal to the cost of construction of such improvements as shown on the plans. Such bond shall be based on an estimate furnished by the applicant, confirmed by the Code Enforcement Officer, or Town Engineer; and approved by the Planning Board as the case may be.
 - 2. Deposit certified check in sufficient amount up to the total of construction of such improvements as shown on the Site Plan.

B. Conditions.

- 1. The performance guarantee shall be to the Town and shall provide that the applicant, his/her heirs, successors, assigns, or his/her agency will comply with all applicable terms, conditions, provisions, and requirements of this Law and will faithfully perform and complete the work constructing and installing such facilities or improvements in accordance with the approved Site Plan.

2. Any such bond shall require the approval of the Town Board in consultation with the Town Attorney as to form, sufficiency, manner of execution and surety.
3. The construction or installation of any improvements or facilities, other than roads, for which a guarantee has been made by the applicant in the form of a bond or certified check deposit, shall be completed within twelve (12) months from the date of approval of the Site Plan. Road improvements shall be completed within two (2) years from the date of approval of the Site Plan. The applicant may request that the Planning Board grant an extension of time to complete such improvements, provided the applicant can show reasonable cause for inability to perform said improvements within the required time. The extension shall not exceed six (6) months, at the end of which time the Town may use as much of the bond or certified check deposit to construct the improvements as necessary. The Planning Board may also grant the applicant an extension of time whenever construction or improvements is not performed in accordance with applicable standards and specifications.
4. Schedule of Improvements. When a certified check or performance bond is issued pursuant to the preceding Sections, the Town and applicant shall enter into a written agreement itemizing the schedule of improvements in sequence with the cost composite for each phase of construction or installation, provided that each cost as listed may be repaid to the applicant except ten percent (10%) of the check deposit or performance bond shall not be repaid to the applicant until one (1) year following the completion and inspection by the Town of all construction and installation covered by the check deposit or performance bond.

C. Inspections.

Prior to the Planning Board Chairman signing the Site Plan, the applicant may be required to pay to the Town Clerk and inspection fee escrow established by the Middleburgh Town Board. Inspections during the installation of improvements shall be made by the Town Engineer and/or Code Enforcement Officer to ensure conformity with the approved plans and specifications as contained in the contract and this Law. The applicant shall notify the Town Engineer and/or Code Enforcement Officer when each phase of improvements is ready for inspection. Upon acceptable inspection and final completion of installation and improvement, the Planning Board shall issue a letter to the applicant or his/her representative that provides sufficient evidence for the release by the Town of the portion of the performance bond or certified check deposit as designated in the contract to cover the cost of such completed work.

D. Phased Development.

The Planning Board may further request, subject to Town Board approval, that the applicant deposit a separate performance bond or certified check for each phase of development proposed. In this event, five percent (5%) of the check deposit or performance bond shall be withheld from the applicant until sixty (60) days following the completion, inspection, and acceptance by the Town of all construction and installation covered by such deposit. No subsequent phase of development shall be undertaken until each earlier phase has been completed and approved by the Town Engineer and/or Code Enforcement Officer.

ARTICLE X SPECIAL USE PERMITS

10.1 Purpose.

It is the policy of the Town of Middleburgh to balance the allowance and encouragement of a variety of uses of land and to foster economic opportunities within municipal boundaries of the Town, provided that such use does not unreasonably and adversely affect neighboring properties, the natural environment, the rural and historic character of the Town or long-term development of the Town. Many uses are, therefore, permitted only upon issuance of a Special Use Permit by the Planning Board to ensure that these uses are appropriate to their surroundings and satisfy performance criteria on a case by case basis. For every Special Use Permit, approval of Site Plan by the Planning Board is also required.

10.2 Applicability.

Uses requiring Special Use Permits are listed for each Zoning District in Schedule 2. Accessory uses, or structures used in connection with a Special Use Permit use shall be subject to the same Special Use Permit approval requirements as the principal structure or use.

10.3 Authorization to Grant or Deny Special Use Permits.

On referral by the Code Enforcement Officer, after application has been made to him/her for a Building Permit, or on direct application, the Planning Board is hereby authorized to issue a Special Use Permit for any use for which this Law requires the obtaining of such permits from the Planning Board, subject to applicable regulations of this Law and procedures in Town Law, Section 274-b.

10.4 Standards Applicable to All Special Use Permits.

- A.** Before deciding on whether to approve, approve with conditions, or disapprove a Special Use Permit, the Planning Board shall consider the general standards set forth in Article VII, Performance Standards for Commercial Uses and Article IX, Site Plan Review Regulations of this Law. In permitting any Special Use, the Planning Board shall take into consideration the public health, safety, and general welfare, community character, agricultural protection, and environmental protection in addition to the comfort and convenience of the public in general in the Town and of the immediate neighborhood. The Planning Board may require modifications to development proposals, submission of alternative design and layout proposals, and may attach reasonable conditions and safeguards to eliminate or minimize potential impacts as a precondition of its approval. In addition, the Planning Board shall also consider the following:
 - 1. **Circulation.** The interior circulation system shall be adequate to provide safe accessibility to all required off-street parking, and to provide for the convenience and safety of all modes of vehicular, pedestrian, and pedestrian movement within the site and in relation to adjacent areas or roads.
 - 2. **Character and Appearance.** The character and appearance of the proposed use, buildings, structures, outdoor signs, and lighting shall be in general harmony with the character and appearance of the surrounding neighborhood and that of the Town of Middleburgh and shall not adversely affect the general welfare of the inhabitants of the Town. The Planning Board may require a Visual Impact Assessment.
 - 3. **Historic and Natural Resources.** The proposed use shall be designed and shall be carried out in a manner that protects historic and natural environmental features on the site under review and in adjacent areas.

4. Level of Public Service. The level of services required to support the proposed activity or use, or will be available, to meet the needs of the proposed activity or use. The consideration shall include: the suitability of water supply and sanitary sewage facilities to accommodate the intended use, and protection from pollution of surface and groundwater and the ability of the volunteer fire and emergency departments to service the site.
5. Emergency Services. All proposed buildings, structures, equipment, and/material, shall be readily accessible for fire, police, and other emergency service protection.
6. Nuisances. The proposed use shall not be more objectionable to nearby property owners or occupants by reason of noise, fumes, vibration, or lighting than would the operations of a permitted principal use. The performance standards found in this Zoning Law shall represent the minimum requirements to be achieved by any proposed use.
7. Additional Safeguards and Conditions. The Planning Board shall impose additional conditions and safeguards upon the Special Use Permit as may be reasonably necessary to assure continual conformance to all applicable standards and requirements, including reasonable assurance that these conditions and safeguards can be responsibly monitored and enforced. Such conditions shall be able to be reasonably monitored and enforced. The conditions imposed may be related to both structural design and operation of the use (including hours of operation) provided they ensure compatibility with the surrounding uses or to protect the resources of the Town.
8. Environmental Consideration. The proposed use shall not have a significant adverse impact as defined by the New York State Environmental Quality Review Act (SEQRA). Such determination shall be made by the Town Planning Board or other designated lead agency.
9. Agricultural Consideration. The proposed use shall not have a significant adverse impact on continuing agricultural operations located in or within five hundred feet (500') of a New York State designated Agricultural District.
10. In or Adjacent to a Residence. In addition to the above criteria, in the case of any use located in, or directly adjacent to a Residential District:
 - a) The location and size of such use, the nature, and intensity of operations involved or conducted in connection therewith, the size of the site in relation to the use, its site layout, and its relation to existing and future streets shall be such that both pedestrian and vehicular traffic to and from the use and assembly of persons in connection with the use, will not be hazardous or inconvenient to, or incongruous with, said Residential District, or conflict with the normal traffic of the neighborhood; and
 - b) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development, and use of, adjacent land and buildings, or impair the value thereof.
11. All Special Use standards and requirements of this Section shall be complied with and included in the coordinated review of the Site Plan and Special Use application.

10.5 Required Findings.

After a public hearing is held in accordance with Town Law, Section 274-b (6), the Planning Board shall have sixty-two (62) days after the public hearing to decide. The Planning Board shall not issue a Special Use Permit unless it makes a written finding that the proposed use, if conducted to any conditions imposed, will satisfy the criteria in Section 10.4 above. If the Planning Board does not make such a finding, it shall deny the Special Use Permit in writing setting forth the reasons for the denial.

10.6 Renewal, Time Limit, and Extension.

The Planning Board may require, as a condition to the issuance of any Special Use Permit, that it be periodically renewed, or may issue any Special Use Permit for a specific time period, subject to adequate guarantees that the use covered will be terminated at the end of the time period specified or such extension thereof as may be granted by said Board. Any such renewal or extension shall be subject to the same procedure and requirements as specified herein for the original issuance of the Special Use Permit involved.

10.7 Submission of Plans.

Because of the impact of Special Use Permit uses varies greatly, the information to be submitted for a Special Use Permit may vary depending upon the scale, intensity, nature of the proposed use and its proposed location. An applicant for a Special Use Permit shall submit at last one (1) original and eight (8) copies along with, if possible, one (1) digital copy containing all application materials of the following together with whatever other information the Planning Board deems appropriate.:

- A. A Town of Middleburgh Special Use Permit application form.
- B. A proposed plan at an appropriate scale showing the size and placement of the lot, the design and location of the proposed facilities (including driveways, parking spaces, screens, and fences) and existing and proposed contour lines. The location of the subject lot and all streets within a radius of one thousand (1,000) feet shall also be shown.
- C. A brief narrative describing the proposed use.
- D. A short-form or long-form SEQRA Environmental Assessment Form (EAF) with Part One (1) completed by the applicant (a long form EAF is required for all SEQRA Type I Actions, but the Planning Board may require a long-form EAF for Unlisted Actions if the Board deems that the additional information contained on the long-form would be helpful and appropriate under the circumstance of the project proposal).
- E. An Agricultural Data Statement, if required.
- F. The application fee as established by the Town Board, and an escrow deposit for reimbursement of costs of Town consultants (if required).
- G. The Planning Board may waive or add any fee requirements for an application submission as it deems appropriate to accomplish the purpose set forth herein.

10.8 Fees.

Each original application to the Planning Board for a Special Use Permit shall be accompanied by a fee set by the Town Board. All application fees are in addition to any required escrow fees as may be established by the Town Board.

10.9 Application.

- A.** If an application is for a parcel or parcels on which more than one (1) use requiring a Special Use Permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of reviewing an application (and for SEQRA compliance) all proposed uses on a single parcel or on contiguous parcels shall be considered together.
- B.** At the first meeting at which an application is first presented as an agenda item, the Planning Board shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Planning Board shall notify the applicant in writing as to what aspects of the application submittal are lacking or are otherwise insufficient to start the process. The time-frames for Planning Board action during the review process shall not commence until the submission of a fully complete application with supporting documents and material and the determination by the Planning Board the application is complete.

10.10 Application for Area Variance.

Where a proposed Special Use Permit contains one (1) or more features that do not comply with the zoning regulations, application may be made to the Board of Appeals for an Area Variance pursuant to the Area Variance procedures in this Zoning Law. Such application may be made without the necessity of a decision or determination by the Code Enforcement Officer.

10.11 SEQRA Compliance.

Upon receipt of an application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review Process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within twenty (20) days of its acceptance of a completed application, EAF, and other supporting materials. Where the proposed action may have a significant adverse impact on the environment, the Planning Board shall issue a Positive Declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this Law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

10.12 Referral to the Schoharie County Planning Commission.

- A.** Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Schoharie County Planning Commission any application for a Special User Permit- affecting real property within five (500') feet of the boundary of the Town of Middleburgh, the boundary of any existing or proposed county or state park or other recreation area, the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established lines, the existing or proposed boundary of any County or state-owned land on which a public building or institution is situated, or the boundary of a farm operation located in an

Agricultural District, as defined by Article 25-aa of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-b, Sections 239-l and 239-m, as amended.

- B.** No action shall be taken on applications referred to the County Planning Commission until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the thirty (30) day requirement for the County Planning Commission's review.
- C.** A majority-plus-one vote of the Planning Board shall be required to grant a Special Use Permit which receives a recommendation of disapproval or approval with modification from the County Planning Commission because of the referral process specified above, along with a resolution setting forth the reasons for such contrary actions.

10.13 Agricultural Data Statement.

- A.** An Agricultural Data Statement is required where the proposed use is in, or within five hundred (500') feet of, boundaries of an Agricultural District.
- B.** If an Agricultural Data Statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Use Permit application to the owners of land as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

10.14 Notice and Hearing.

- A.** The Planning Board shall hold a public hearing on a complete Special Use Permit application within sixty-two (62) days from the determination of the Planning Board that the application is complete. The time in which a public hearing must be held may be lengthened only upon consent of the Applicant and Planning Board.
- B.** At least five (5) days prior to the date of such hearing, the Planning Board shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to all adjoining property owners and to any other property owners in the affected area that the Planning Board may require to be notified.
- C.** Compliance with General Municipal Law 239-nn. The Planning Board shall provide notice of the public hearing on a Special Use Permit to neighboring municipalities if the property is within five hundred (500') feet of an adjacent municipality.

10.15 Action.

- A.** The Planning Board shall grant, deny, or grant subject to conditions the application for a Special Use Permit within sixty-two (62) days after the hearing. Any decision by the Planning Board shall contain written findings explaining the rationale for the decision considering Section 10.4 of this Zoning Law. The decision shall be filed with the Town Clerk.
- B.** In granting a Special Use Permit, the Planning Board may impose conditions that it considers necessary to protect the health, safety, and welfare of the Town. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicular

access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden of public services and facilities and protect open space, requiring protection of open space and conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

10.16 Change of Use, Revocation, and Enforcement.

- A.** A Special Use Permit shall expire if the Special Use or Use ceases for more than twenty-four (24) consecutive months for any reason, if the applicant fails to obtain any necessary permit or fails to comply with the conditions of the Special Use Permit within eighteen (18) months of its issuance, or if its time limit expires without renewal.
- B.** A Special Use Permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Use Permit (as determined by the Code Enforcement Officer in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by a Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.
- C.** A Special Use Permit may be revoked by the Planning Board if the permittee violates the conditions of the Special Use Permit or engages in any construction or alteration not authorized by the Special Use Permit.
- D.** Any violation of the conditions of a Special Use Permit shall be deemed a violation of this Law and shall be subject to enforcement actions as provided herein.

10.17 Amendments.

The terms and conditions of any Special Use Permit may be amended in the same manner as required to grant a Special Use Permit, following the criteria and procedures in this Section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a Special Use Permit amendment.

10.18 Waiver of Requirements.

Waivers. The Planning Board is hereby empowered to waive, when reasonable, any requirements for the approval, approval with modifications or disapproval of Special Use Permit submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate to a particular Special Use Permit

- 1. If the applicant wishes to request a waiver, said request shall be submitted in writing as part of the application. The application shall state fully the grounds of said request.
- 2. The Planning Board shall make findings supporting their decision regarding a waiver.
- 3. Waivers shall be made by resolution of the Planning Board.

4. When granting waivers, the Planning Board may also impose additional conditions as need to achieve the objectives of the waived requirement(s).

ARTICLE XI

NONCONFORMING BUILDINGS, USES, AND ACTIVITIES

The provisions of this Section shall apply to all Nonconforming Uses or dimensions existing on the effective date of this Law, and to a land use, building, or dimension that becomes Nonconforming by reason of any future amendment of this Law. Any appeals from this provision shall be dealt with in accordance with the procedures provided in Article XII, Board of Appeals. It is the intent of these regulations to permit Nonconforming Uses to continue until they are removed but not to encourage their long-term use.

11.1 Continuance of Existing Uses.

The lawful use of any building, land use or activity in existence on the effective date time of this Law may continue although not in conformity with this Law, except as otherwise provided in this Article.

11.2 Maintenance and Repair.

Normal maintenance and repair of a nonconforming building including the restoration of a building declared unsafe by proper authority to a safe condition and the repair of a building damaged by fire or other cause, is permitted as long as the degree or extent of nonconformity is not increased or exceeded, or no new nonconformity is created.

11.3 Reconstruction and Restoration.

If a nonconforming building or land use activity or part thereof has been destroyed or damaged by any means it may be rebuilt or restored as a nonconforming building or use only if reconstructed or restored with the same or less floor area, height, and with the same, or an improved, general site layout as that of the original structure. The Zoning Board of Appeals approval of reconstruction and restoration plans shall be required by the Zoning Board of Appeals and may impose conditions on such approval if such conditions would approve an otherwise bad situation and bring the nonconforming use or activity more in conformity with the regulations for the District in which it is located, in the same form and location but without enlargement or extension. Such restoration shall be completed within one (1) year.

11.4 Changes.

A nonconforming use may be changed to another nonconforming use only by variance granted by the Board of Appeals. A nonconforming use may be changed to a conforming use but shall not thereafter revert to a nonconforming use.

11.5 Abandonment and Discontinuance.

Abandonment and discontinuance of any nonconforming use or activity for a period of twelve (12) consecutive months for a total of twenty (20) months during any three (3) year period shall terminate such nonconforming use of the building and premises. No such nonconforming use shall be in conformance with the provisions of this Law for the area in which such building or premises is located. The date of abandonment or discontinuance of a nonconforming use shall be determined by the Code Enforcement Officer and notification of such action shall be made in writing to the property owner with a copy to the Town Clerk. The Zoning Board of Appeals may grant extension of the termination date of such nonconforming use for an additional six (6) months after a public hearing.

11.6 Public Properties.

This Law is not intended to restrict the construction or use of public buildings or lands or property supported in part or in whole by taxes on property in the Town of Middleburgh, New York in the exercise of a governmental function. This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structure shall

conform in character to the environment in which erected. Telecommunication Facilities are considered public utilities when needed by a licensed public utility and the Town of Middleburgh recognizes the need for such services. However, Telecommunication Facilities require a Special Use Permit as outlined in Section 8.6 of this Law.

11.7 Lot in Different Districts.

A. If a lot is divided by a Zoning District boundary, one (1) of the following conditions shall apply:

1. The respective District regulations shall apply to each portion of the lot so divided, or
2. The regulations of the more restrictive District may be applied to the entire lot, or
3. The Zoning Board of Appeals may establish requirements within this intent of this Law, which represents a compromise between the requirements of the Districts, involved, and which are approximately proportional to the area of the lot that lies within each different District. In no case shall such requirements be less restrictive than the regulations on the least-restrictive District.
4. The least-restrictive District shall be determined by the number of permitted uses in each zone. The greater number of permitted uses, the less restrictive the Zoning District shall be determined to be.

ARTICLE XII
BOARD OF APPEALS AND VARIANCES

12.1 Membership.

The Board shall consist of five (5) members appointed by the Town Board for staggered terms of five (5) calendar years.

1. **Residency.** All members of the Board of Appeals shall be residents of the Town of Middleburgh. No person who is a member of the Town Board shall be eligible for membership on the Board of Appeals.
2. **Terms of Members Now in Office.** Members now holding office terms which do not expire at the end of the calendar year shall, upon expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the Board.
3. **Training Attendance Requirements.**
 - a) Each member of the Board of Appeals shall complete, at a minimum four (4) hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four (4) hours in any one (1) year may be carried over by the member into succeeding years in order to meet this requirement. Such training shall be approved by the Town Board and may include, but not limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning, and traditional classroom training.
 - b) To be eligible for reappointment to the Board, a member shall have completed the required training.
 - c) No decision of the Board of Appeals shall be voided or declared invalid because of failure to comply with this training requirement.
4. **Vacancy in Office.** If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint a new member for the unexpired term.
5. **Removal of Members.** The Town Board may remove, after public hearing, any member of the Board of Appeals for cause. Cause of removal of a member may include one (1) or more of the following:
 - a) Any undisclosed conflict of interest.
 - b) Failure to attend 33% of the meetings during one (1) calendar year.
 - c) Failure to complete mandatory training requirements.
6. **Chairperson.** The Town Board shall appoint one (1) of the Board of Appeals members as a Chairperson to preside at all meetings and hearings and to fulfill the authorized duties of that office. The Chairperson shall annually appoint one (1) of the Board of Appeals members as Vice Chairperson. In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers of the Chairperson and duties as may be provided by the rules of the Board. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or in his or her absence, the Acting Chairperson, may administer oaths to applicants, witnesses, or others appearing before the Board and may compel the attendance of witness.

7. **Public record.** The Town Clerk shall provide for keeping of files of all records of the Board of Appeals, and those records shall be public records open to inspection at reasonable times and upon reasonable notice.
8. **Rules of Procedure, By-Laws, Forms.** The Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this Law. Such rules, by-laws, and forms shall not conflict with, nor have the effect of waiving any provisions of this Law or any other laws of the Town of Middleburgh.
9. **Staff.** The Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided it shall not at any time incur expense beyond the amount of the appropriation made and then available for that purpose.

12.2 Board of Appeals Procedure.

- A. **Meetings, Minutes, Records.** Meetings of the Board of Appeals shall be open to the public except for records exempted from disclosure under the New York State Public Officer's Law (Freedom of Information Law) or documents which are protected by attorney-client privilege. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- B. **Filing Requirements.** Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the Town Clerk's Office within five (5) business days and shall be a public record.
- C. **Assistance to the Zoning Board of Appeals.** The Board shall have the authority to call upon any department, agency, or employees of the Town for such assistance as the Board deems necessary. All costs incurred by any department, agency, or employee for aiding in a proceeding may be borne by the applicant.
- D. **Hearing Appeals.** Unless otherwise provided in this Land Use Law or other local law, generally the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of New York State Town Law. For the purposes of this Law, the administrative official charged with enforcement shall be the Code Enforcement Officer as applicable pursuant to the provisions of this Law. The Board of Appeals shall have the power, upon appeal from a decision or determination of the Code Enforcement Officer, to grant Use and Area variances. Where a proposed Special Use, Site Plan, or Subdivision contains one (1) or more features which do not comply with the land use regulations, application may be made to the Board of Appeals for an Area Variance without the necessity of a decision or determination by the Enforcement Officer.
- E. **Filing of Administrative Decision and Time of Appeal.**
 1. Each order, requirement, decision, interpretation or determination of the Code Enforcement Officer charged with the enforcement of this Town of Middleburgh Land Use Law shall be filed in the office of such Code Enforcement Officer, within five (5) business days from the day it is rendered, and shall be a public record.
 2. All appeals must be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer by filing with the Code Enforcement Officer and with the Board of Appeals a notice of appeal. The notice of appeal shall: specify the grounds for such appeals; the relief sought; identify specifically the section of the Land

Use Law or other code or law involved; describe precisely and in detail either the interpretation claimed the relief should be granted. The notice of appeal shall be accompanied by a short or full Environmental Assessment Form as required by the State Environmental Quality Review Act (SEQRA), by an Agricultural Data Statement as required by NY AML 25-aa, and by other documents relevant to the appeal specified by the Board of Appeals. The appellant shall also be required to pay a filing fee at the time of the filing of the appeal in an amount to be established by the Town Board. The cost of sending notices relating to such appeal by certified mail, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon receiving notice of appeal, the Code Enforcement Office shall transmit to the Board of Appeals all papers constituting the record upon which the action appealed was taken.

- F. Stay Upon Appeal.** An appeal shall stay all proceedings relating to the action appealed from, unless the Code Enforcement Officer determines and certifies in writing to the Board of Appeals, after the notice of appeal shall have been filed with the Code Enforcement Officer, that by reason of facts stated in the certificate that a stay, would, in his or her opinion, cause imminent peril to life or property. Should such a certification be made, proceedings shall not be stayed other than by a restraining order granted by the Board of Appeals or by a Court of record on application, on notice to the Code Enforcement Officer from whom the appeal is taken and on due cause shown.
- G. Public Hearing.** The Board of Appeals shall fix a reasonable time for the hearing of the appeal or matter referred to it. The appellant and any other parties to the appeal shall be given written notice of the hearing date and of the fact that at such hearing he or she may appear in person or be represented by an attorney or other agent. Said notice shall be provided at least ten (10) days in advance of the hearing and shall be provided to the appellant by certified mail. The Board of Appeals shall additionally provide notice as follows:
1. The Board of Appeals shall give public notice of such public hearing by publication in an official paper of general circulation in the Town at least ten (10) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating, thereto shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.
 2. If a New York State Park or New York State Parkway shall be located within five hundred (500') feet of the property affected by the appeal, at least ten (10) calendar days prior to such public hearing, the Board of Appeals shall send notices to the regional State Park Commission having jurisdiction over the State Park or Parkway.
 3. The Board of Appeals shall also give notice to the Schoharie County Planning Commission as required by Section 239-m of the New York State General Municipal Law. Such notice shall be in writing at least ten (10) calendar days prior to such hearing.
 4. If the land affected by the appeal is within five hundred (500') feet of the boundary of any other municipality, the Clerk of the Board of Appeals shall also submit at least ten (10) calendar days prior to the public hearing to the municipal clerk of such other municipality or municipalities a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.
 5. In any application or appeal for a variance, the Clerk of the Board of Appeals shall provide written notice of the public hearing, along with the substance of the variance appeal or application, to: the owners of all property abutting, or directly opposite, that of the property affected by the appeal; and to

all other owners of the property within five hundred feet (500') of the property which is the subject of the appeal. Such notice shall be provided by certified mail at least ten (10) calendar days prior to the date of the hearing. Compliance with this notification procedure shall be certified by the Clerk.

6. The names and addresses of surrounding property owners to be notified in accordance with the forgoing shall be taken from the last completed tax roll of the Town.
7. Provided that there has been substantial compliance with this provision, failure to give notice in exact conformance herewith shall not be deemed to invalidate an action taken by the Board of Appeals in either granting or denying a variance from a specific provision of this Local Law.

H. Referrals and Notice to the Schoharie County Planning Commission and Town of Middleburgh Planning Board.

1. At least thirty (30) days before such hearing, the Board of Appeals shall mail notice to the Schoharie County Planning Commission as required by Section 239-m of General Municipal Law. The notice shall be accompanied by a full statement of the proposed action, as defined by in Subdivision one of Section 239-m of the General Municipal Law. No action shall be taken by the Zoning Board of Appeals until an advisory recommendation has been received from the County Planning Commission or thirty (30) calendar days have elapsed since the Planning Commission received such full statement. In the event the Schoharie County Planning Commission recommends disapproval of the requested variance or the attachments of modifications thereto within such time period or a later date to prior to final action by the Board of Appeals, the Board of Appeals shall not act contrary to such recommendation except by a majority plus one (1) of all members after the adoption of a resolution fully setting forth the reasons for such contrary action. Within thirty (30) days after such final action, the Board of Appeals shall file a report of the final action it has taken with the Schoharie County Planning Commission.
2. The Board of Appeals shall transmit to the Town of Middleburgh Planning Board a copy of the appeal or application, and shall request the Planning Board submit to the Board of Appeals its advisory opinion on said appeal or application. The Planning Board shall submit a report of such advisory opinion prior to the date of the public hearing. The failure of the Planning Board to submit such report within thirty-five (35) days from the date the Board of Appeals transmitted their request for an advisory opinion with a copy of the appeal or application to the Planning Board shall be interpreted as a favorable opinion for the appeal or application.

I. Compliance with State Environmental Quality Review Act. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part 617 of the New York Codes, Rules and Regulations.

J. Time of Decision. The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the hearing is completed. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

K. Voting Requirements.

1. **Decision of the Board.** Every motion or resolution of a Board of Appeals shall require for its adoption the affirmative vote of a majority of all members of the Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the Schoharie County Planning Commission the voting provisions of Section 239-m of the New York State General Municipal law shall apply.

2. **Default Denial of Appeal.** In exercising its appellate jurisdiction only, if an affirmative vote of a majority of members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Code Enforcement Officer within the time allowed by this Law, the appeal is denied. The Board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in this Law.
- L. Filing of Decision and Notice.** The decision of the Board of Appeals on the appeal shall be filed in the Office of the Town Clerk together with all pertinent documents within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the Applicant. The Board of Appeals shall notify the Town Board and Planning Board in writing of each variance issued or granted under provisions of this Law.
- M. Rehearing.** Upon motion initiated by any member and adopted by unanimous vote of members present, but not less than a majority of all members, the Board of Appeals may vote to give notice and hold one (1) rehearing to review any order, decision, or determination previously made. After such rehearing, the Board upon the concurring vote of all members present and provided it shall then appear that the rights vested prior thereof in persons acting in good faith in reliance upon the order, decision, or determination reviewed will not be subject to prejudice thereby, may reverse, modify or annul its original order, decision, or determination.

12.3 Permitted Action by the Board of Appeals.

- A. Orders, Requirements, Decisions, Interpretations, Determinations.** The Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer charged with the enforcement of such ordinance or local law, and to that end, shall have all the powers of such Code Enforcement Officer from whose order, requirement, decision, interpretation, or determination the appeal is taken.
- B. Use Variances.**
 1. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Law, the Zoning Board of Appeals shall have the power to grant a variance in application of any of the use regulations or provisions of this Law in such a way that the spirit of the Law shall be observed and maintained, public health, safety, and welfare secured, and substantial justice done.
 2. No such Use Variance shall be granted by the Board of Appeals without showing by the applicant that applicable land use regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each permitted use under the land use regulations for the district where the property is located:
 - a) The Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
 - b) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the District or neighborhood; and
 - c) That the requested Use Variance, if granted, will not alter the essential character of the neighborhood; and
 - d) That the alleged hardship has not been self-created.
 3. The Board of Appeals shall consider any Agricultural Data Statement and whether the variance would have an undue adverse impact on a farm operation identified by the Agricultural Data Statement.

4. The Board of Appeals, in granting Use Variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

C. Area Variances.

1. Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, and all other regulations not specifically related to use of land or building, unreasonable or impossible to comply with, the Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed.
2. In making its determination, the Board of Appeals shall take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination the Board of Appeals shall consider the following factors:
 - a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the Area Variance.
 - b) Whether the benefit sought by the Applicant can be achieved by some other method, feasible for the Applicant to pursue, other than an Area Variance.
 - c) Whether the requested Area Variance is substantial.
 - d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or District; and
 - e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the Area Variance.
3. The Board of Appeals, in granting Area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

D. Imposition of Conditions. The Board of Appeals shall, in the granting of both Use and Area Variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law and shall be imposed for the purpose of minimizing any adverse impact such Variance may have on the neighborhood or community.

E. Relief from Decisions. Any person or persons, jointly or severally aggrieved by any final decision of the Board of Appeals, may apply to the New York State Supreme Court for review by a proceeding under Article 78 of the New York Civil Practice Law and Rules. Such proceeding shall be governed by the specific provisions of CPLR Article 78 except that the action must be commenced as therein provided within thirty (30) days after the filing of the decision of the Board of Appeals in the Office of the Town Clerk.

F. Strict Construction. All provisions of this Article pertaining to the Board of Appeals shall be strictly construed. The Board of Appeals shall act in strict conformity with all provisions of law and of this Article and in strict compliance with all limitations contained therein, provided however, that if the procedural requirements set forth in this Article have been substantially observed, no applicant or appellant shall be deemed deprived of the right of application or appeal.

G. Other Provisions of New York State Town Law Section 267-a. All other provisions of New York State Town Law, Section 267-a regarding Board of Appeals procedure not set forth herein are incorporated herein by reference and shall apply to the Board of Appeals.

12.4 Financial Gain, Conditions, Compliance, and Fees.

A. Financial Gain Not A Criterion.

In no case shall a Use or Area Variance be granted solely for reasons of additional financial gain on the part of the owner or occupant of the land or building involved.

B. Compliance with the Rest of the Law.

The granting of a Variance to any provision of this Law shall not obviate the necessity of complying in every other respect with the other provisions of this Law.

C. Fee.

Each application to the Board of Appeals for a Variance shall be accompanied by a fee set by the Town Board.

ARTICLE XIII ADMINISTRATION AND ENFORCEMENT

The effectiveness of laws is chiefly dependent on voluntary compliance. Enforcement must happen where voluntary compliance does not occur. When laws are not enforced, the public's faith in the law is undermined. Failure to enforce the law also results in unequal application of the law. Therefore, this Article provides for both criminal and civil penalties and other remedies where the law has been violated. No remedy provided herein is exclusive. Violations of the New York State Uniform Fire Prevention and Building Code are enforced and remedied pursuant to separate local laws adopted to administer and enforce the New York State Uniform and Fire Prevention Building Code.

13.1 Power and Duties of the Code Enforcement Officer.

- A.** This Law shall be administered by the Code Enforcement Officer together with the Town Board, the Planning Board, and Zoning Board of Appeals depending on the appropriate jurisdiction pursuant to this Law. Compliance with this Law shall be enforced by the Code Enforcement Officer.
- B.** Should the Code Enforcement Officer be in doubt as to the meaning or intent of any provisions of this Law, or as to the location of any District boundary line on the Official Town of Middleburgh Zoning Map, or as to the propriety of issuing a Building Permit, Zoning Permit, or Certificate of Occupancy in a particular case related to the provisions of this Law, the Code Enforcement Officer shall appeal the matter to the Zoning Board of Appeals for interpretation or decision.
- C.** Report to the Town Board. The Code Enforcement Officer shall give a monthly report to the Town Board describing and enumerating all actions that have been taken and all permits that have been issued. A copy of this report will also be provided to the Chairman of the Planning Board.

13.2 Zoning and Building Permits.

- A. Applicability.** No person shall undertake any development or commence any land use activity as set forth in Section 1.5 without first applying for, and obtaining, a Zoning Permit and/or Building Permit from the Code Enforcement Officer. A Zoning Permit will be issued only when the Code Enforcement Officer has determined that all requirements of this Law and all other applicable laws and regulations have been satisfied.

B. Steps to Obtain Zoning and/or Building Permits.

- 1. No person shall undertake any development or commence any land use activity as set forth in Section 1.5 without first applying for, and obtaining, a Zoning Permit and/or Building Permit from the Code Enforcement Officer unless otherwise exempt pursuant to Section 1.6. by submitting the appropriate application form and paying the required fee as established by the Town Board.
- 2. The Code Enforcement Officer shall grant or deny the permit as provided or refer the application to the Planning Board if a Special Use Permit and/or Site Plan approval is required.
- 3. If a Building Permit or Zoning Permit is issued, the Applicant may proceed to undertake the action permitted upon submission of any required fees as established by the Town Board. Upon completion of any construction, the Applicant shall apply to the Code Enforcement Officer for a Certificate of Occupancy (for building permits only).

4. If the Code Enforcement Officer finds the Applicant's action has been undertaken in accordance with the Building Permit, the Code Enforcement Officer shall issue a Certificate of Occupancy, allowing the structure to be occupied.
5. If the Code Enforcement Officer denies the Building or Zoning Permit and does not refer the application to the Planning Board or Town Board, the Applicant may appeal to the Zoning Board of Appeals.

C. Application for Zoning and/or Building Permit.

1. All applications for a Building and Zoning Permit shall be made on prescribed forms provided by the Code Enforcement Officer and shall include the required application fee as established by the Town Board and two (2) copies of the following information:
 - a) Land. A description of the land on which the proposed use or construction will occur, including deed and filed map references, lot numbers, and tax parcel numbers.
 - b) Uses, Occupancy. A statement of the existing and proposed use of all parts of the land and the location, character, and existing and proposed use of any existing or proposed buildings or structures; including the number of floors, entrances, rooms, types of construction and the kind and extent of any exterior horizontal extension proposed toward any boundary or street line of the lot.
 - c) Identity of Owner, Applicant. The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations.
 - d) Description of Work or Change in Use. A brief description of the nature of the proposed work or change in use.
 - e) Valuation of Work. The valuation of the proposed construction work, if any.
 - f) Plans and Specifications. In addition to the requirements of Subsection B (1) above, each application for a Building Permit shall be accompanied by two (2) copies of plans and specifications, including a map, survey (if applicable), site development or plot plan, drawn to scale, showing course, dimensions and details of all boundary lines of the proposed lot of occupancy and the adjacent street boundaries.
2. Applications for a Building Permit for the construction of a new structure or expansion of an existing structure equal to 1,500 gross square feet or more shall require plans and specifications that shall bear the signature of the person responsible for the design and drawings required by the Education Law or any other applicable statutes, laws, rules or regulations of the State of New York, the seal of a licensed architect, licensed professional engineer or licensed landscape architect.
3. The Code Enforcement Officer may waive one (1) or more of the requirements of this Section for minor alterations, as defined in the New York State Uniform Fire and Prevention Code.

4. Additional Information. Such other information as may reasonably be required by the Code Enforcement Officer to establish compliance of the proposed work or change in use with the requirements of this Law.

D. Action upon Zoning and Building Permit Applications.

1. The Code Enforcement Officer shall promptly review a Building or Zoning Permit application and approve, deny, or refer the application to the Planning Board if Site Plan Review or a Special Use Permit is required. The Code Enforcement Officer shall provide a written reason for any denial. A copy of the approved or disapproved application shall be delivered or mailed certified mail, return receipt to the applicant.
2. An application with the approval of the Code Enforcement Officer shall constitute the Building Permit or Zoning Permit, which shall become effective when the Code Enforcement Officer has filed written approval of the permit application in the Office of the Town Clerk. A copy of the Building Permit shall be placed in the permanent property file for the property.
3. After completion of footings and establishing of the forms on the first course of the foundation walls, or equivalent structure, the owner shall notify the Code Enforcement Officer. If required by the Code Enforcement Officer, the owner shall cause a survey to be made by a licensed land surveyor, showing the true location of such foundation walls with respect to the lot lines of the lot, and a copy of such survey shall be filed with the Code Enforcement Officer before construction is continued.

E. Flood Control Regulations.

The Code Enforcement Officer shall review all Building Permit applications for new construction or substantial improvements to determine whether the proposed building sites meet the standards of the Town of Middleburgh's Flood Damage Prevention Law and Section 6.2 of this Law and will be resemble safe from flooding.

F. Appeal.

An appeal may be made to the Zoning Board of Appeals from any decision of the Code Enforcement Officer within forty-five (45) days of the decision.

G. Termination of Building or Zoning Permit.

A Zoning Permit shall lapse one (1) year following the date it was granted if the project has not been completed or the use has not commenced. The Code Enforcement Officer shall renew any Zoning Permit one (1) time for a period terminating not later than one (1) year from the date it would have originally lapsed, provided that the facts upon which the Zoning Permit was originally granted have not substantially changed. Any further renewals shall require Zoning Board of Appeals approval.

13.3 Certificate of Occupancy.

A. Applicability.

1. No land use shall be altered, and no building shall be occupied, used or changed in use until a Certificate of Occupancy has been approved and issued by the Code Enforcement Officer stating that the building or the proposed use thereof complies with the provisions of this Law and all other applicable laws and regulations.
2. No Certificate of Occupancy shall be issued until the road or roads have been completed sufficiently to provide proper and reasonable ingress and egress for emergency vehicles.
3. No Certificate of Occupancy shall be issued without prior approval of water supply and sewage facilities by the Schoharie County Department of Health or Town Engineer.

B. Application.

A Certificate of Occupancy shall be applied for upon completion of construction. Said Certificate shall be issued within ten (10) days after the erection or alteration has been approved as complying with the provisions of this Law.

C. Temporary Certificates.

Upon request, the Code Enforcement Officer may issue a Temporary Certificate of Occupancy for a building or structure, or part thereof, before the entire work covered by the Building Permit has been completed, provided such portion or portions as have been completed may be occupied safely without endangering life or the public welfare. Such Certificate shall be effective for a period not to exceed thirty (30) days.

D. Refusal.

If the Code Enforcement Officer, after final inspection, refuses to issue a Certificate of Occupancy, he or she shall state such refusal in writing with the cause and immediately mail notice of such refusal by registered mail to the applicant at the address indicated on the application. Such notice shall include information on the appeals procedure.

E. Appeal.

An appeal may be made to the Zoning Board of Appeals from any decision of the Code Enforcement Officer within forty-five (45) days.

13.4 Violations, Penalties, and Remedies.

A. Violations.

1. Complaints and Investigations. Whenever a suspected violation of this Law occurs, any person shall file a signed written complaint reporting such a violation to the Code Enforcement Officer. The Code

Enforcement Officer shall investigate any written complaint made to his/her office. All written complaints shall be properly recorded, filed, and promptly investigated by the Code Enforcement Officer, and reported to the Town Board.

2. Notice of Violation.

- a) Upon finding there to be a violation of this Law, the Code Enforcement Officer shall transmit a written Notice of Violation certified mail, return receipt requested, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation, with a copy to the Town Board. The Notice of Violation shall require an answer or correction within a reasonable time limit set by the Code Enforcement Officer. The Notice shall state that failure to reply or to correct the alleged violation to the satisfaction of the Code Enforcement Officer within the time limits constitutes admission of a violation of this Law. The Notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made, and that, if a violation as alleged is found, costs of the determinations, will be charged against those responsible, in addition to such other penalties as may be appropriate, and that, if it is determined that no violation exists, costs of determination will be borne by the Town.
- b) If, within the time limit set, there is no reply, but alleged violation is corrected to the satisfaction of the Code Enforcement Officer, a "Certificate of Compliance" shall be made on the Code Enforcement Officer's copy of the notice.
- c) If there is no reply within the time limit set (this establishing admission of a violation of this Law) and the alleged violation is not corrected to the satisfaction of the Code Enforcement Officer within the time limit set, the Code Enforcement Officer shall act with Subsection 3, below.
- d) A permanent record of all Notices of Violation and their disposition shall be kept in the Office of the Code Enforcement Officer.

3. Abatement of Violations. The Code Enforcement Officer or the Town Board may issue a stop-work or cease-and-desist order and/or institute any appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this Law to prevent the occupancy of premises, or to prevent any activity, business, or use that violates this Law.

a) Stop Work Orders.

- 1) Stop Work Orders shall be in writing, dated, and signed by the Code Enforcement Officer with stated reason(s) for issuance and if applicable state the conditions which must be satisfied before work will be permitted to resume.
- 2) The Stop Work Order, or copy thereof, shall be transmitted by certified mail, return receipt to the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder). The Code Enforcement Officer shall be permitted, but not required, to transmit a copy of the Stop Work Order certified mail to any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part in assisting in work affected by the Stop Work Order; provided however, failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

- 3) Upon issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in assisting in work shall immediately cease all work which is the subject of the Stop Work Order.
 - 4) The issuance of a Stop Work Order shall not be an exclusive remedy to a violation, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any remedy or impose any other penalty under this Law or any other local law. Any such remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.
- b) Appearance Tickets. The Code Enforcement Officer is authorized to issue appearance tickets for any violation of this Law.
 - c) Legal Action. An action or proceeding may be instituted in the name of the Town of Middleburgh in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or abatement of the condition in violation of such provisions. No action or proceeding described in this Subsection shall be commenced without appropriate authorization from the Town Board of the Town of Middleburgh.

B. Penalties.

1. Civil Penalties. Any person who violates any provision of this Law or who fails to do any act required thereby shall, for each such violation, be liable to a civil penalty of not up to \$1000.00. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to any additional penalty.
2. Criminal Penalties. In addition to the civil penalties described in Subsection B (1), the following criminal penalties shall apply:
 - a) First Offense. A violation of this Law is an offense, punishable by a fine not exceeding \$350.00 or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense;
 - b) Second Offense. Conviction of a second offense, both of which were committed within a period of five (5) years, is punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six (6) months, or both;
 - c) Third and Subsequent Offense. Conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, is punishable by a fine not less than \$700.00 no more than \$1,000.00 or imprisonment for a period not to exceed six (6) months, or both.
 - d) Each week's continued violation shall constitute a separate additional violation, for which separate and additional civil penalties may be imposed and recovered.

- e) Where the person committing such violation is a partnership, association or corporation, the principal executive officer, partner, agent, or manager may be considered to the “person” for the purposes of this Article.
- f) Such fines or penalties may be comprised or released by the Town Board as a part of any disposition.

C. Unpaid Fines.

If a fine is imposed and is not paid within thirty (30) days or such other time period established by the Court, then following mailing of the Notice described herein, the unpaid fines shall be assessed by the Town as a lien against the fine debtor’s real property in the Town and added to the current tax roll by the Town as unpaid charge attributable to the real property. Prior to assessing this lien for unpaid fines, the Town shall mail a notice to the fine debtor at his/her last known address by regular first-class mail stating that unless the fines are paid within fifteen (15) days of the notice date, they will be assessed and collected as an unpaid charge attributable to the real property.

D. Additional Remedy.

The imposition of penalties for any violation of this Law shall not execute the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this Law shall not prevent the abatement of a violation pursuant to Subsection A (3). The expenses of the Town in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender, and may be recovered in a civil court of appropriate jurisdiction.

13.5 Health Department Requirements.

No Building Permit or Certificate of Compliance issued under the provisions of this Article shall become or remain valid unless the holder thereof has complied with the applicable rules and regulations of the Health Department of jurisdiction.

ARTICLE XIV

PROPERTY MAINTENANCE

14.1 Property Maintenance.

A. Purpose.

1. It is the purpose of this Article to assist in the continued revitalization of areas throughout the Town to attract new residential, light industry, and businesses; promote the public interest in continued development; ensure regular maintenance and improvements to present structures; safeguard against blight and preserve property values and community standards; and to establish minimum maintenance standards to safeguard life, limb, health, safety, property, and public welfare in the best interest of the residents of the Town of Middleburgh.
2. It is found and declared that, by reason of lack of maintenance and progressive deterioration, structures and properties have the further effect of creating blight conditions and if the same are not curtailed and removed, the aforesaid conditions will grow and spread and will necessitate in time expenditure of large amounts of public funds to correct and eliminate the same. By reason of timely regulations and restrictions, as herein contained, growth of blight may be prevented and neighborhood property values thereby maintained, the desirability and amenities of residential and nonresidential uses and neighborhoods enhanced and public health, safety, and welfare protected and fostered.

B. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

Deterioration: The condition or appearance of a building or structure characterized by holes, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

Exposed to Public View: Any premises or open space or any part thereof or any building or structure that may be lawfully viewed by any member of the public from a sidewalk, street, alleyway or from any adjoining or neighboring premises.

Good Working Condition: Fully operable for the use intended.

Good Working Repair: A standard of maintenance that renders a building safe, habitable and possessed of a neat and orderly appearance.

Operator or Manager: Any person who has charge, care or control of a building or part thereof.

Premises: A building, dwelling and/or grounds.

Refuse and Junk:

- a) ***Refuse:*** Includes but shall not be limited to scrap metal, waste bottles, cans, paper, rubble, boxes, crates, rags, used construction materials, motor vehicle parts and used tires, all cardboard, plastic material or glass containers, sweepings, pieces of wood, excelsior, rubber and like material.
- b) ***Junk:*** Any manufactured good, appliance, fixture, furniture, machinery, motor vehicle, recreational vehicle, trailer or similar object which is abandoned, demolished, discarded, dismantled or so worn, deteriorated or in such a condition as to be generally unusable in its existing state.

C. Provisions to be Minimum Standards; Conflict with Other Provisions.

- 1. This Article establishes certain minimum standards for the initial and continued occupancy and use of all structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the structure, the premises or the equipment or facilities contained therein, as required by the State of New York Uniform Fire Prevention and Building Code.
- 2. In any case where a provision is found in conflict with any applicable zoning, building, plumbing, electrical, heating, ventilation, fire or safety code of the Town of Middleburgh, County of Schoharie, State of New York or United States of America, the provision that establishes the higher standard, as determined by the Code Enforcement Officer, shall prevail.

D. Exterior Standards.

- 1. The exterior of the premises and the condition of structures shall be maintained so that the premises and buildings shall reflect a level of maintenance in keeping with the standards of the community and shall not constitute blight from adjoining property owners or lead to the progressive deterioration of the neighborhood. Such maintenance shall include, without limitation, the following:
 - a) Foundations, porches, decks, steps, stairs and walls shall be in good condition.
 - b) Vent attachments shall be safe, durable, smoke tight and capable of withstanding the action of flue gases.
 - c) Exterior balconies, porches, roof area (other than used for normal maintenance), landings, stairs and fire escapes shall be provided with banisters or railings properly designed, installed and maintained to minimize the hazard of falling and unsightly appearance.
 - d) All permanent signs and billboards exposed to public view permitted by reason of other regulations or as a lawful nonconforming use shall be maintained in good repair. Any signs that have become excessively weathered, those upon which the paint has excessively peeled or those whose supports have deteriorated so that they no longer meet the structural requirements of the State of New York Uniform Fire Prevention and Building Code shall, with their supports, be removed or put into a good state of repair. All nonoperative or broken electrical signs shall be repaired or shall, with their supports, be removed. Signs denoting a business which is no longer on the premises shall be removed within thirty (30) days of the date on which the business ceases to occupy the premises.
 - e) All exterior walls of a building, accessory building or structure, whether residential, commercial or industrial, exposed to the public view shall be kept in a good state of repair. Storefronts or any

portion of a structure shall not show evidence of excessive weathering or deterioration of any nature. Unoccupied storefronts shall be maintained in a clean and neat appearance.

- f) Any awnings or marquees and accompanying structural members shall be maintained in a good state of repair. If said awnings or marquees are made of cloth, plastic or similar material and are exposed to public view, such material shall not show evidence of excessive weathering, discoloration, ripping, tearing, holes or other deterioration. Nothing herein shall be construed to authorize any encroachment on streets, sidewalks or other parts of the public domain.
- g) All vacant buildings shall be continuously guarded or sealed and kept secure against unauthorized entry. Materials and methods with which such buildings are sealed must meet the approval of the Code Enforcement Officer as to design and building material. Owners of such buildings shall take such steps and perform such acts as may be required to ensure that the building and its adjoining yards remain safe and secure and do not present a hazard to adjoining property or to the public and that such property does not become infested with vermin or rodents.
- h) Exterior walls, including doors and windows and the areas around doors, windows, chimneys and other parts of the building, shall be so maintained as to keep water from entering the building. Materials which have been damaged or show evidence of dry rot or other deterioration shall be repaired or replaced and refinished in a workmanlike manner.
- i) All exposed exterior surfaces shall be maintained free of broken or cracked glass, loose shingles or loose or crumbling stones or bricks, loose shutters, railings, aerials, excessive peeling paint or other conditions reflective of deterioration or inadequate maintenance. Said conditions shall be corrected by repair or removal. All exposed exterior surfaces of structures not inherently resistant to deterioration shall be coated, treated or sealed to protect them from deterioration or weathering. Wood, masonry or other exterior materials that will naturally resist deterioration do not have to be treated but must be otherwise maintained in a sound, secure, workmanlike manner. Exterior surfaces that have been painted or otherwise coated must be maintained in a neat, orderly, serviceable manner. Floors, walls, ceilings, stairs and fixtures of buildings shall be maintained in a clean, safe, sanitary condition. Every floor, exterior wall, roof, porch or appurtenance thereto shall be maintained in a manner to prevent the collapse of the same or injury to the occupants of the building or to the public.
- j) Roof drains, overflow pipes, air-conditioning drains and any other device used to channel water off or out of a building shall be maintained in a safe and operable condition and shall not drain onto a public sidewalk, walkway, street, alleyway or adjoining property.
- k) Lawns shall be kept cut and not to exceed ten (10) inches in height. Trees, brush, shrubs and hedges shall be trimmed regularly during the growing season to avoid an unsightly appearance or obstruct sidewalks and roadways. Piles of materials such as dirt, sand and similar materials shall be used or removed within thirty (30) days of receiving said materials. Failure to comply with this subsection, within five (5) days of being notified, will result in the Town taking any legal action necessary to correct the violation. This will include the issuing of an appearance ticket or/and the Town removing the material or cutting the grass or having the same done by contract with a third party. Any and all cost associated with correcting the violation shall be assessed upon the real property on which the brush, grass or weeds are found. The fees for action taken by the Town shall be established from time to time by the Town Board by resolution.

A. Open Areas and Parking Spaces; Unregistered Vehicles.

1. Surface or subsurface water shall be appropriately drained to protect buildings and structures and to prevent the development of stagnant ponds. Gutters, culverts, catch basins, drain inlets, storm sewers or other satisfactory drainage systems shall be utilized where necessary. No roof, surface or sanitary drainage shall create a structural, safety or health hazard by reason of construction, maintenance or manner of discharge.
2. Fences and other minor construction shall be maintained in a safe and substantial condition.
3. Steps, walks, driveways, parking spaces and similar paved areas shall be maintained to afford safe passage under normal use and weather conditions. Any holes or other hazards that may exist shall be filled and necessary repairs or replacement carried out.
4. Yards and vacant lots shall be kept clean and free of physical hazards and rodent harborage and infestation. They shall be maintained in a manner that will prevent dust or other particles from being blown about the neighborhood. Open wells, cesspools or cisterns shall be securely closed or barricaded from access by the public. All temporary excavations shall be kept covered or barricaded to protect the general public from injury.
5. All land must be kept free of dead or dying trees and accumulations of brush, shrubs, weeds, grass, stumps, roots, excessive and/or noxious growths, garbage, refuse or debris which would either tend to start a fire or increase the intensity of a fire already started or cause poisoning or irritation to people or animals or cause or tend to cause or enhance an unhealthy or dangerous or obnoxious condition on said property or on any adjacent or neighboring property.
6. No more than one (1) unregistered vehicle may be stored in a dwelling's driveway or yard, and said vehicle must pass New York State motor vehicle inspection of the current inspection year, and the sticker must be visible on the front windshield. This subsection shall be enforced by the Code Enforcement Officer.

B. Commercial Units.

1. Commercial units shall always be maintained in compliance with the provisions of this Article regulating open spaces, buildings or structures and littering.
2. No outside storage or accumulation of garbage, crates, rubbish, refuse or debris shall be permitted at any time, and all such garbage, crates, rubbish, refuse, or debris shall be kept inside the building or buildings on the premises or in an acceptable enclosure and shall be regularly collected and removed from the premises.
3. No shopping baskets, carts or wagons shall be left unattended or standing in open areas, and the same shall be collected at the close of business each day by the occupant of such unit and moved to a clearly designated area dedicated to said baskets, carts or wagons, or to the interior of the building or buildings.
4. No mobile refrigeration unit shall be operated on the premises after the closing of the business conducted thereon unless such mobile refrigeration unit is electrically operated, except in an industrial zone.

5. All fences and planting areas installed on the premises shall be maintained by the owner of the property. Such maintenance shall include but not be limited to the replacement of trees and shrubs which may die and/or otherwise be destroyed, the maintenance and cutting of lawns, and the replacement and/or repair of fences which may become in disrepair.
6. Persons owning or occupying a commercial unit shall keep all walkways, public or private, abutting said premises free from litter and trash of whatever nature.

C. Infestation, Storage and Screening.

1. Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation. Methods used for exterminating insects, vermin and rodents shall conform to generally accepted practice.
2. Where the potential for rodent or vermin infestation exists, windows and other openings in basement and cellars shall be closed or appropriately screened with mesh or other suitable material.
3. Furniture, materials, goods, supplies.
 - a) Intent. The intent of this Section is to promote the health and safety of the community in general by reducing fire hazards and eliminating harborage for rodents and the spread of diseases they carry. The intent is to eliminate such conditions created by the protracted storage or utilization of furniture not specifically designed and intended for outdoor use and the detrimental effect that such storage or use has on the health, safety and quality of life for Town residents and to the value of the homes and properties adjoining such situations.
 - b) Furniture. Any furniture designed and intended for indoor use, including, but not limited to, upholstered furniture such as chairs, couches, sofas, davenports, ottomans, loveseats, loungers, mattresses, bed frames, box springs, etc., shall not be located, used, housed or otherwise stored in or on any non-enclosed balcony porch, deck, patio, roof, landing, stairs, fire escape, yard, sidewalk or driveway.
 - c) Materials, goods, supplies. No materials, goods or supplies may be stored in any front yard or in any exterior or interior side yard. Materials may be stored in a rear yard, provided that the area used for storage is screened from neighboring properties by a fence or hedge, provides protection from the elements, and that the method and manner of storage complies with the other provisions hereof.

D. Litter, Sanitary Facilities and Methods; Abandoned Refrigerators and Freezers.

1. Residential, commercial and industrial premises, whether improved or vacant shall be maintained free of litter; provided however, that this Section shall not prohibit the storage of litter in appropriate private receptacles for collection.
2. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse in accordance with the provisions of applicable codes. Each owner of any building from which garbage, rubbish, mixed refuse, ashes or other waste are collected shall provide refuse containers sufficient in number to hold all collectible wastes which may accumulate. Containers must be rodentproof and insect proof and watertight and must always be kept covered. Such containers must be kept from public view till day of pickup.

3. No refrigerator or freezer may be discarded, abandoned or stored in a place accessible to children without first completely removing any and all doors; also, a certificate from an authorized person or company (New York State Penal Law) showing that all freon has been lawfully removed.
4. Dumpsters and similar large receptacles shall be shielded from the public view by means of appropriate landscaping, hedges, fences or screening. Commercial users of dumpsters in noncompliance with this Article shall have twelve (12) months from the date of its adoption to comply or appeal for a variance. This Section shall not apply to receptacles for clothing and the like donated to charity.
5. Shopping centers, supermarkets and similar business units shall provide permanent, attractive, decorated litter receptacles within the premises for public use, in sufficient quantity so that a person will not have to walk in excess of fifty (50) feet to use any such receptacles.

E. Responsibilities of Owner, Occupants, Agent or Operator.

1. The owner, occupant, agent and operator in control of the building, structure, lot or parcel of land shall be jointly and severally responsible for the maintenance of the premises in a clean, safe and sanitary condition according to the provisions of this Article.
2. Notwithstanding the failure of the occupant, agent or operator in control of the building, structure, lot or parcel of land to maintain the premises in a clean, safe and sanitary condition, the owner of the building, structure, lot or parcel of land shall be an accessory responsible party.

F. Inspection and Enforcement.

1. The Code Enforcement Officer is hereby authorized to make inspections to determine compliance with this Article. Inspections shall be made at times determined by the Code Enforcement Officer. Every operator or owner shall cooperate with the Code Enforcement Officer in providing access to the premises. Whenever the Code Enforcement Officer determines that there is a violation of the provisions of this Article, he/she shall cause a written notice to be served upon the owner or operator, which shall include:
 - a) An enumeration of conditions which violate the provisions of this Article.
 - b) An enumeration of the remedial action required to meet the standards of this Article.
 - c) A statement of a definite number of days from the date of the notice in which the owner or operator must commence and complete such remedial action.
 - d) A statement of the penalties for noncompliance, as set forth herein.
2. A copy of such notice shall be filed in the Town Clerk's office, and such notice shall be deemed sufficient if served upon the owner or operator as follows:
 - a) In person;
 - b) By certified mail with return receipt requested; or

- c) By posting a copy of said notice on the building, only if attempts to serve the owner or occupant by the first two methods set out above are unsuccessful.
- 3. Apart from Section D (K), upon failure to comply with said notice, the Code Enforcement Officer shall issue an appearance ticket returnable to the Town of Middleburgh Justice Court.

G. Property Under Construction.

- 1. For purpose of enforcement of this Article, if work is being done on the property, either the prime or general contractor or the owner shall be held responsible.
- 2. Materials may be stored in any area of the property upon which construction is being carried on, provided that the method of storage and the materials stored follow the requirements of this Article. In no event shall such storage be permitted for a period exceeding one (1) year.
- 3. Drainage crossing the property being developed must be maintained during the period of development, and no materials may be stored, land disturbed, or other work done to interfere with drainage or to divert or cause runoff of groundwater or stormwater in an unnatural fashion.
- 4. The person responsible as herein provided shall take all necessary and reasonable steps to ensure that there will not be an unusual or unwarranted amount of dust and debris blown onto or across neighboring or nearby properties.
- 5. Construction roads must be kept wet or properly treated to decrease the spread of dust and mud.
- 6. A temporary cover such as rye grass or a mulch must be applied on land that has been stripped of its protective vegetation during its construction to prevent the spread of dust or mud.
- 7. All excavations in or near a public or private walkway or street must always be properly guarded and protected by lights, flags, barricades or other warnings sufficient in kind and amount to warn the public of the danger of falling into the excavation.
- 8. Temporary electric service must be through electric lines that are weatherproof and waterproof, such lines must not cross public walkways or highways on the ground, nor shall they be placed on the ground in areas subject to construction equipment traffic.
- 9. Grounds and buildings must be kept free of debris such as broken glass, boards with fastenings protruding and other articles making travel around the job site dangerous and unsafe.

H. Penalties for Offenses. Please refer to Article XIII of this Zoning Law.

ARTICLE XV

AMENDMENTS TO ZONING LAW

15.1 Amendments by Town Board.

The Town Board from time to time on its own motion or on petition by taxpayers or on recommendation of the Planning Board after public notice and hearing as prescribed by the Town Law may amend, supplement, modify, or repeal in whole or part of this Law or the boundary of any District established by the Law.

15.2 Advisory Report by Planning Board.

Any such proposed change in text or Zoning District boundary, not originating from the Planning Board, shall first be referred to the Planning Board prior to public hearing thereon by the Town Board. The Planning Board shall favorably recommend adoption of an amendment or change in this Law or in a District boundary only if:

1. Such change does not conflict with the general purposes, goals, and intent of this Law; and
2. Such amendment is consistent with the Comprehensive Plan.

The Planning Board shall submit to the Town Board its advisory report within thirty (30) days after receiving notice from the Town Clerk of the proposed change. The failure to make such report within thirty (30) days shall be deemed to be a favorable recommendation.

15.3 Public Notice and Hearing.

A. Public Hearing. No such change in text or Zoning District boundary of this Law shall become effective until after a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.

B. Newspaper Notice of Hearing.

1. By publishing a notice of the proposed amendment and the time and place of public hearing in a newspaper of general circulation in the Town not less than ten (10) days prior to the date of public hearing.
2. Such notice shall describe the area, boundaries, regulations, or requirements that such proposed change involves.

C. Written Notice of Change or Amendment. At least ten (10) days prior to the date of said public hearing, written notice of such proposed change or amendment affecting property within five hundred feet (500') of the boundaries of any adjoining Town or Village shall be given to the Town or Village and shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment. Written notice shall also be sent to any applicable agency as required in Section 264 of Town Law.

D. Referral to County Planning Commission. Before taking final action on certain proposed amendments to this Law, as specified in, and in accordance with, Section 239-m of Article 12-B of the General Municipal Law, the Town Board shall refer such amendments to the Schoharie County Planning Commission for report thereon.

E. Protest. A protest against a proposed change or amendment to this law if signed by the owners of twenty percent (20%) or more of the area of land included in such proposed change, or by the owners of twenty percent (20%) or more of the area of land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land shall require the favorable vote of at least four (4) members of the Town Board to become effective.

15.4 SEQRA Compliance.

A proposed amendment to this Zoning Law shall comply with the State Environmental Quality Review Act (SEQRA) in all respects.

15.5 Filing.

All amendments to this Law shall be filed with the New York State Secretary of State's Office.

15.6 Fee.

Every petition for an amendment to this Law shall be accompanied by a fee set by the Town Board to help defray the cost of such technical studies or professional assistance as may be necessary in connection therewith.

15.7 Adoption.

The Town Board may adopt amendments to this Zoning Law by a majority vote of its membership, except in the case of disapproval by the County Planning Commission, in which case a favorable vote of four (4) of the Town Board members shall be required for approval of any amendment. A copy of the decision shall be promptly mailed to the applicant.

15.8 Effective Date.

Each amendment adopted by the Town Board shall take affect when filed with the New York State Secretary of the State's office pursuant to the Municipal Home Rule Law of the State of New York.

ARTICLE XVI SUBDIVISION OF LAND

16.1 Planning Board Authority.

The Town of Middleburgh Planning Board has the power and authority to approve or disapprove Plats for Subdivision within the Town of Middleburgh, New York.

16.2 Zoning Change in Subdivision Approval.

In approving Subdivision Plats where one (1) or more lots do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an Area Variance, without the necessity of a decision or determination by the Code Enforcement Officer. The Planning Board shall provide a written recommendation to the Zoning Board of Appeals concerning the proposed Area Variance.

16.3 Policy.

- A.** The Town of Middleburgh Planning Board shall consider land Subdivision Plats as part of a plan for the orderly, efficient, economic, environmentally sound development of the Town.
- B.** In cases where the Planning Board finds that a proposed Subdivision may adversely affect the preservation of natural and cultural resources and/or prime farmland of statewide importance, according to the soil survey prepared for Schoharie County by the U.S. Department of Agriculture, the Planning Board may require an applicant to submit a plan for a Conservation Subdivision as provided for in Section 278 of New York State Town Law and Section 16.10 of this Article.
- C.** These Subdivision Regulations shall supplement and facilitate the provisions of this Law, the Town of Middleburgh Official Zoning Map, and the Town's Comprehensive Plan. The following objectives shall guide the Planning Board's decisions:
 - 1. Land is to be subdivided in a way that protects the natural, cultural, and scenic resources of the Town for the benefit of all residents.
 - 2. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace.
 - 3. Proper provisions shall be made for water supply, drainage, sewage, utilities, and other needed improvements.
 - 4. Proposed development shall be planned such that it is compatible with sound development patterns of adjacent and neighboring properties within the Town of Middleburgh.
 - 5. Proposed public roads shall compose a convenient system and shall be of such width, grade, and location as to accommodate present and prospective traffic, and shall meet Town highway specifications and other local laws of the Town of Middleburgh.
 - 6. Provisions shall be made for adequate permanent reservations of open space, pedestrian trails, viewing areas, parks, playgrounds and such areas shall be shown on the Plat.

7. Provisions shall be made for maintaining undeveloped natural areas and corridors to mitigate any adverse environmental impacts of a proposed Subdivision, and to sustain biodiversity, protect water resources, agricultural soils, historic and archeological assets, and viewsheds to implement the Town's policies of protecting environmental and cultural resources pursuant to this Law, the Town Comprehensive Plan, and other applicable local laws.

D. All reviews of applications specified in these Regulations shall be coordinated with involved agencies and boards at the local, County, and State levels to ensure consistent, well-designed Subdivisions and decision-making that will benefit the Town of Middleburgh.

16.4 Inconsistencies with Town Law.

Should any of these Regulations conflict or be inconsistent with any provision of the Town Law, such provision of the Town Law shall apply.

16.5 Self-Imposed Restrictions.

Nothing in these Regulations shall prohibit the Subdivider from placing self-imposed restrictions, not in violation of these Regulations, on the development. Such restrictions, however, shall be indicated on the Plat.

16.6 Procedure for Filing Subdivision Applications.

Whenever any Subdivision of land is proposed to be made, and before any contract for the sale of any offer to sell any lots in such Subdivision or any part thereof is made, and before any permit for the erection of a structure in such proposed Subdivision shall be granted, the Subdivider or his/her duly authorized agent shall apply in writing for approval of such proposed Subdivision in accordance with the following procedures.

A. Sketch Plan.

1. The Sketch Plan initially submitted to the Planning Board shall be based on tax map information or some other similarly accurate base map at a scale (preferably not, less than one hundred (100) feet to the inch) to enable the tract to be shown on one (1) sheet. The Sketch Plan shall be submitted to show the following information:
 - a) The location of that portion which is subdivided in relation to the entire tract, and the distance to the nearest existing street intersection.
 - b) Within the portion to be subdivided and within two hundred (200) feet thereof all existing structures, wooded areas, streams, and other significant physical features.
 - c) The name of adjoining property owners.
 - d) The kind of development proposed (such as residential, commercial, etc.)
 - e) All utilities available, and all streets which are either proposed, mapped, or built.
 - f) The proposed pattern of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage, and water supply (see Section, 16.9) within the subdivided area.

- g) All existing restrictions on the use of land including easements, covenants, or zoning lines.
- h) The date, north arrow, map scale, name, and address of recorded owner and Subdivider.

B. Submission of Sketch Plan.

1. Any owner of land shall, prior to subdividing land, submit to the Secretary or Chairman of the Planning Board at least ten (10) days prior to the regular meeting of the Planning Board, ten (10) copies of a Sketch Plan of the proposed Subdivision along with, if possible, one (1) digital copy containing all application materials, which shall comply with the requirements of Section 16.6, B (2) for the purposes of classification and preliminary discussion.
2. Discussion of Requirements and Classification.

The Subdivider, or his/her duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, sewerage, water supply, fire protection, and similar aspects as well as the availability of existing services and other pertinent information.

Classification of the Sketch Plan is to be made at this time by the Planning Board as to whether it is a Lot Line Adjustment, Minor Subdivision, or a Major Subdivision. If the Sketch Plan is classified as a Lot Line Adjustment, the Subdivider must comply with the procedure outlined in Section 16.8. If the Sketch Plan is classified as a Minor Subdivision, the Subdivider shall comply with the procedure outlined in Section 16.7, Check List, then Section 16.9, Minor Subdivision of these Regulations. If it is classified as a Major Subdivision, the Subdivider shall comply with the procedures as outlined in Section 16.7 and in Section 16.10.

3. Sketch Plan Review and Recommendations.

The Planning Board, in studying the Sketch Plan, shall take into consideration the requirements of these Regulations and the best use of the land being subdivided. Particular attention will be given to the arrangement, location, and width of roads, their relationship to topography of the land, sewage disposal, drainage, lot sizes and arrangements, the further development of adjoining land, as yet unsubdivided, and the goals and objectives of the Town Land Use Plan as it may exist.

The Planning Board shall review the location of the proposed Subdivision for the presence of any adverse natural considerations limiting development on the site. If the site falls into areas on the soils map denoted as having “severe” or “very severe” limitations, within flood hazard areas, or areas of steep slope, or areas of unique hydrological or natural habitat areas (including wetlands), the Planning Board may require the applicant to consult with appropriate technical review or assistance agencies (such as, but not limited to Soil Conservation Service, Department of Environmental Conservation, Army Corps of Engineers, and State Health Department) to determine appropriate measures to mitigate or eliminate any problems or conflicts. The findings or recommendations of such agencies shall not be binding on the Planning Board or the Applicant. The Planning Board may require a Conservation Subdivision. See Section 16.11 to avoid development in these critical areas and shall not approve a Preliminary or Final Plat which has failed to adequately address critical resource concerns (soils, flood hazards, steep slopes, hydrologic and natural habitat resources). The Planning Board may transmit copies of the Sketch Plan to other interested officials or agencies of government for review and comment as necessary. Written comments, if any, from these officials and agencies shall be required within thirty (30) days of their receipt of Sketch Plan. After reviewing the Sketch Plan and reports, as may be submitted, the Planning Board shall determine

whether the Sketch Plan meets the purposes of these Regulations and shall, where it deems necessary, make specific recommendations in writing to be incorporated by the applicant into the next submission to the Planning Board. Such recommendations shall be made within forty-five (45) days from the time the Sketch Plan was initially reviewed by the Planning Board.

The applicant shall be responsible for any fee or specialized consultant services deemed necessary by the Town Planning Board in order to properly process the application. The applicant shall be notified by certified mail, return receipt, prior to retaining any specialized services.

16.7 Checklist for Minor and Major Subdivisions.

- A.** Discuss plans with Chairman and Planning Board (bring sketch);
- B.** Make recommended changes to sketch;
- C.** Within six (6) months, complete the following:
 - 1. Have property surveyed by a Licensed Land Surveyor. Minor Subdivision surveys may be waived, at the discretion of the Planning Board;
 - 2. Submit application for the Preliminary Plat approval;
 - 3. Submit Preliminary Plat (Instructions Section 16.9 or Section 16.10 or Section 16.11);
 - 4. Submit appropriate fees;
 - 5. Submit owner certification;
 - 6. Submit certification of no unpaid taxes (County Treasurer);
 - 7. Submit copy of covenants and deed restrictions (Right of Ways, etc.)
 - 8. Verify that sanitation and sewer meet current sanitation and water laws (Town, County, and State).
 - 9. If the proposed action would occur within an Agricultural District or within five hundred (500) feet of an Agricultural District, complete an Agricultural Data Statement;
 - 10. Show Subdivision Name on Plat and application;
 - 11. Attend Public Hearing;
 - 12. Planning Board will refer to the Schoharie County Planning Commission, if appropriate;
 - 13. Planning Board shall approve, conditionally approve, or disapprove;
 - 14. Submit Final Plat and application for Final Plat approval;
 - 15. If approved or conditionally approved:
 - a) Post completion bond or certified check in the amount determined by the Planning Board (payable to: Town of Middleburgh).

b) Complete requirements.

16. Building Inspector O. K's completion if required.

17. Planning Board approves Final Plat.

18. Final Plat is filed with County Clerk.

19. Bond is refunded by Town when work is completed.

16.8 Lot Line Adjustments.

A. If the Planning Board determines that the proposed Plat is a Lot Line Adjustment, it shall recommend any changes to the new lot lines and determine by majority vote that the proposed action does not constitute a Subdivision as defined by these Regulations and is a Lot Line Adjustment that meets the following criteria:

1. The proposal does not increase nor decrease the number of lots;
2. It is a minor modification of an existing lot line; or is the conveyance and merger of a portion of one (1) parcel to an adjoining parcel;
3. It would not create a nonconforming parcel or cause any other parcel to become nonconforming; and
4. It would comply with all applicable zoning requirements of this Law and applicable New York State Department of Health regulations pertaining to well and septic distances from parcel boundaries.

B. Planning Board Sketch and Discussion

The applicant shall then provide the following to the Planning Board:

1. Prepare a brief summary of the proposal and sketch;
2. Provide proof all required taxes have been paid;
3. Provide a Sketch Plan that shall include:
 - a) Using tax map, add new lot line.
 - b) Show entire property and proposed change.
 - c) Show physical features including streams and woods.
 - d) Show name of adjoining property owners.
 - e) Show existing easements and restrictions.
 - f) Show date/north arrow/scale/name and address of owner.

C. Sketch Plan Review by the Planning Board.

1. Planning Board reviews the plan for adverse natural conditions.

2. After Planning Board determines proposed Plat is a Lot Line Adjustment a survey of the land, by a Licensed Land Surveyor, to be transferred including language to clarify which parcel the adjusted land will be conveyed to and that to does not constitute a separate parcel;
3. Written permission statement, signed and notarized by all impacted property owners is required;
4. New deeds for each property that is impacted by a boundary change shall be done. This change may involve a loss of property or a gain of property;
5. A fee established by the Town Board in the fee schedule.

D. Planning Board Review and Approval.

1. Upon submission of a complete application, the Planning Board shall, within sixty-two (62) days, review the Application and shall either approve or deny the Application. Approval may be granted when the Planning Board determines that the proposed adjustment meets all the requirements for a Lot Line Adjustment and would not adversely affect the site's development or neighboring properties, would not alter the essential characteristics of the neighborhood, or adversely affect the health, safety, or welfare to Town residents.
2. No public hearing shall be required.
3. The Applicant shall file the new deeds and map with the Schoharie County Clerk within sixty-two (62) days of the approval date. The Survey Map (Mylar) shall be signed and stamped by the Planning Board. No person shall file plans for any Lot Line Adjustment without first obtaining Planning Board's signature and stamp on the plans.
4. The map shall have the title, "LOT LINE ADJUSTMENT between properties of (name) and (name)."

16.9 Minor Subdivision Plat.

- A. Within six (6) months after classification of the Sketch Plan as a Minor Subdivision by the Planning Board, the Subdivider shall apply for approval of a Subdivision Plat. The Plat shall conform to the layout shown on the Sketch Plan plus any recommendations made by the Planning Board.

All applications for Plat approval for Minor Subdivisions shall be accompanied by a nonrefundable fee (the amount is to be established by the Town Board).

B. Submission Requirements for a Plat for Minor Subdivision.

1. One (1) original of the Minor Plat prepared at scale of not more than one hundred (100') feet to the inch. The Plat application shall include the following information:
 - a) A certificate by the owner stating: "As the owner I hereby certify that I have caused the land described on this Plat to be surveyed, divided, mapped, dedicated, and access rights reserved as represented on the Plat." This certificate shall be executed as a conveyance is executed;
 - b) A certificate issued by the authorized Town and County Officials to the effect that there are no unpaid taxes and special assessments have been paid on all property dedicated for public use.

- c) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract;
- d) An actual fields survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract and each lot shall also be located on the ground and marked by an iron rod, concrete post, or other suitable permanent marker;
- e) All on-site sanitation and water supply facilities shall be designed to meet the minimum of the current Sanitation Laws and a note to this effect shall be stated on the Plat and signed by a duly appointed agent of the Town;
- f) Proposed Subdivision name, name of the Town and County in which it is located;
- g) The date, north point, map scale, name and address of recorded owner and Subdivider;
- h) The Plat to be filed with the County Clerk shall be printed upon Mylar or an acceptable equal or clearly drawn in India Ink upon tracing cloth. The size of the sheet shall be no larger than twenty-two (22") inches by thirty-five (35") inches;
- i) The width, location and locations of any streets or public ways or places shown on the Official Map or the Master Plan, if such exists, within the area to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the developer must be shown.

C. Procedure.

1. **Number of Copies.** Ten (10) copies of the original Subdivision Plat along with, if possible, one (1) digital copy containing all application materials shall be presented to the Clerk or Chairman of the Planning Board at the time of submission of the Subdivision Plat.
2. **Subdivider to Attend Planning Board Meeting.** The Subdivider, or his/her duly authorized representative, shall attend the meeting of the Planning Board to discuss the Subdivision Plat.
3. **SEQRA.** The Planning Board and the Subdivider shall, together, complete the State Environmental Quality Review Act (SEQRA) Process.
4. **Date of Completed Application.** The date of a completed application for the proposed Subdivision shall be the date on which the application, including all data required by Section 16.9, Minor Subdivisions, of these Regulations, and the required fees have been filed with the Planning Board. The Planning Board shall make a motion indicating that all required elements are present.
5. **Public Hearing.** A public hearing shall be held by the Planning Board within sixty-two (62) days from the time of the completed application. Said hearing shall be advertised in a newspaper of general circulation in the Town at least five (5) days before such hearing. The applicant shall notify by Certified Mail, at least five (5) days prior to the public hearing, the owners of the property abutting the proposed Subdivision and directly across from any adjoining road and shall furnish the Planning Board with post office receipts as proof of notification. If an Agricultural Data Statement has been

completed, the applicant shall mail, by Certified Mail, a copy of the Statement to the identified property owners. The Planning Board may notify other persons or agencies as it deems necessary.

6. **Schoharie County Planning Commission Review.** Applications for Preliminary and Final Plat approval shall be subject to referral to the Schoharie County Planning Commission pursuant to Section 239-n of the General Municipal Law, if located within five hundred (500') feet of:
 - a) The Town Boundaries;
 - b) The boundaries of any existing or proposed County or State Park or other recreation area; or
 - c) The right-of-way of any County or State Highway; or
 - d) The right-of-way of any existing or proposed stream or drainage channel owned by the County or for which the County has established channel lines; or
 - e) The boundary of any existing or proposed County or State land on which a public building or institution is situated; or
 - f) The boundary of a farm operation in an Agricultural District.
7. **Action on a Subdivision Plat.** The Planning Board shall, within sixty-two (62) days from the date of the closing of the public hearing, act to conditionally approve, conditionally approve with modification, disapprove or grant final approval and authorize the signing of the Subdivision Plat. This time (62 days) may be extended by mutual consent of the Subdivider and the Planning Board. Failure of the Planning Board to act within such time shall constitute approval of the Plat.

Upon granting conditional approval with or without modification to the Plat, the Planning Board shall empower a duly authorized officer to sign the Plat upon compliance with such conditions and requirements as may be stated in its resolution of conditional approval. The Plat shall be stamped and signed by the Chairman of the Planning Board as conditionally approved, a copy filed in the Planning Board's files, and a certified copy mailed to the Subdivider. The copy mailed to the Subdivider shall include an authorized statement of such requirements, which, when completed, will authorize the signing of the conditionally approved Plat. Upon completion of such requirements, the Plat shall be signed by the duly designated officer of the Planning Board. Conditional approval of a Plat shall expire one hundred eighty (180) days after the date of the resolution granting such approval unless the requirements have been certified as completed within that time. The Planning Board, may, however, extend the time within which a conditionally approved Plat may be submitted for signature, if in its opinion, such extension is warranted in the circumstances, for not to exceed two (2) additional periods of ninety (90) days each. Upon Completion of such requirements, the Final Plat shall be signed by the duly designated officer of the Planning Board.

16.10 Major Subdivision Plat.

A. Preliminary Plat for Major Subdivision.

1. **Application and Fee.** Prior to the filing of an application for the approval of a Major Subdivision Plat, the Subdivider shall file an application for the approval of a Preliminary Plat of the proposed

Subdivision. Such Preliminary Plat shall be clearly marked “Preliminary Plat” and shall be in the form described in Section 16.10 (C), Plat for Major Subdivision hereof. The Preliminary Plat shall, in all respects, comply with the requirements set forth in provisions of Section 276 and 277 of the Town Law, and Section 16.10 (C), Plat for Major Subdivision, of these regulations, except where a waiver may be specifically authorized by the Planning Board. A non-refundable fee is to be established by the Town Board and submitted to the Clerk of the Planning Board with the Preliminary Plat.

2. **Number of Copies.** Ten (10) copies of the Preliminary Plat along with, if possible, one (1) digital copy containing all application materials shall be presented to the Clerk or Chairman of the Planning Board at the time of submission of the Preliminary Plat.
3. **Subdivider to Attend Planning Board Meeting.** The Subdivider, or his/her duly authorized representative, shall attend the meeting of the Planning Board to discuss the Preliminary Plat.
4. **Study of the Preliminary Plat.** The Planning Board shall study the practicability of the Preliminary Plat taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location, and width of streets, their relationship to the topography of the land, water supply, sewerage disposal, drainage, lot sizes and arrangement, the future development of the adjoining lands as yet unsubdivided, as well as the recommendations of the Master Plan, the Official Zoning Map, and the requirements of the Town of Middleburgh Zoning Law, if such exist. The Planning Board shall schedule a field trip to the proposed Subdivision site accompanied by the applicant or his/her agent. In order to facilitate field inspection and review of the site, temporary staking along the centerline of all proposed roads at fifty (50') foot intervals on curves and at one hundred (100') foot intervals on tangents and proposed front lot corners is required.
5. **When Officially Submitted.** The date of a completed application for the proposed Subdivision shall be the date on which the application, including all data required by Section 16.10, Major Subdivisions, of these Regulations, and the required fees have been filed with the Planning Board. The Planning Board shall make a motion indicating that all required elements are present.
6. **SEQRA.** The Planning Board and the Subdivider shall complete the State Environmental Quality Review Act (SEQRA) process.
7. **Schoharie County Planning Commission Review.** Applications for Preliminary and Final Plat approval shall be subject to referral to the Schoharie County Planning Commission pursuant to Section 239-n of the General Municipal Law, if located within five hundred (500') feet of:
 - a) The Town Boundaries;
 - b) The boundaries of any existing or proposed County or State Park or other recreation area; or
 - c) The right-of-way of any County or State Highway; or
 - d) The right-of-way of any existing or proposed stream or drainage channel owned by the County or for which the County has established channel lines; or
 - e) The boundary of any existing or proposed County or State land on which a public building or institution is situated; or
 - f) The boundary of a farm operation in an Agricultural District.

8. **Approval of the Preliminary Plat.** Within sixty-two (62) days after the receipt of such Preliminary Plat by the Chairman of the Planning Board, the Planning Board shall hold a public hearing, which hearing shall be advertised at least once in a newspaper of general circulation in the Town at least five (5) days before such hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such Preliminary Plat. The applicant shall notify by Certified Mail, at least five (5) days prior to the public hearing, the owners of the property abutting the proposed Subdivision and directly across from any adjoining road and shall furnish the Planning Board with post office receipts as proof of notification. If an Agricultural Data Statement has been completed, the applicant shall mail, by Certified Mail, a copy of the Statement to the identified property owners. The Planning Board may notify other persons or agencies as it deems necessary.

Within sixty-two (62) after such hearing, the Planning Board shall approve with or without modification or disapprove such Preliminary Plat, and the reason for a modification, if any, of the reason for disapproval shall be stated upon records for the Planning Board. The time in which the Planning Board must act on such Plat, may be extended by mutual consent of the Subdivider and Planning Board. When so approving the Preliminary Plat, the Planning Board shall state in writing modifications, of any as it deems necessary for submission of the Plat in final form. Within five (5) days of approval of such Preliminary Plat, it shall be certified by the Chairman of the Planning Board as granted preliminary approval and a copy filed in their office, a certified copy, mailed to the owner, and a copy forwarded to the Town Board. Failure of the Planning Board to act within such sixty-two (62) day period shall constitute approval of the Preliminary Plat.

When granting approval of a Preliminary Plat, the Planning Board shall state the terms of such approval, if any, with respect to (1) the modifications to the Preliminary Plat. (2) the character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety, morals and general welfare, (3) the amount of improvement or the amount of all bonds therefore which it will require as prerequisite to the approval of the Subdivision Plat. Approval of a Preliminary Plat shall not constitute approval of the Subdivision Plat, but rather it shall be deemed an expression of approval of the design submitted on the Preliminary Plat as a guide to preparation of the Plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these regulations. Prior to approval of the Subdivision Plat. The Planning Board may require additional changes as a result of further study of the Subdivision in final form or as a result of new information obtained at the public hearing.

B. Major Subdivision Preliminary Plat and Accompanying Data.

The following documents shall be submitted for approval:

1. Ten (10) copies of the Major Preliminary Plat along with, if possible, one (1) digital copy containing all application materials prepared at a scale of not more than one hundred (100') but preferably less than fifty (50') feet to the inch, showing:
 - a) Proposed Subdivision name, name of the Town and County in which it is located, date, true north point, scale, name and address of record owner, Subdivider, and engineer or surveyor, including license number and seal;

- b) The name of all Subdivisions immediately adjacent and the name of the owners of record of all adjacent property;
 - c) Zoning District, including exact boundary lines of District, if more than one (1) Zoning District and any proposed changed in the zoning ordinance text applicable to the area to be Subdivided;
 - d) All parcels of land proposed to be dedicated to public use and the conditions of such dedication;
 - e) Location of existing property lines, easements, buildings, water courses, marshes, rock outcrops, wooded areas, and other significant existing features for the proposed Subdivision and adjacent property;
 - f) Location of existing sewers, water mains, culverts, and drains on the property, with pipe sizes and grades and direction of flow;
 - g) Contours with intervals of twenty (20') feet or less as required by the Planning Board including elevations of existing roads. Approximate grading plan if natural contours are to be changed more than two (2') feet;
 - h) The width and location of any streets or public ways or places shown on the Official Map or the Master Plan, if such exists, within the area to be Subdivided, and the width, location, grades, and street profiles of all streets or public ways proposed by the developer.
 - i) The appropriate location and size of all proposed water lines, valves, hydrants, and sewer lines, and fire alarm boxes. Connections to existing lines or alternate means of water supply or sewerage disposal and treatment as provided in Public Health Law. Profiles of all proposed water and sewer lines;
 - j) Storm drainage plan indicating the approximate location and size of proposed lines and their profiles. Connections to existing lines or alternate means of disposal.
 - k) Plans and cross-sections showing the proposed location and type of sidewalks, street lighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, and the size and type thereof, the character, width, and depth of pavement and sub-base, the location of manholes and basins underground conduits;
 - l) Preliminary designs of any bridges or culverts which may be required;
 - m) The proposed lot lines with approximate dimensions and area of each lot;
 - n) Where topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out, the Preliminary Plat shall show the boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than twenty (20') feet in width and which shall provide satisfactory access to an existing public highway or other public highway or public open space on the Subdivision or the Official Map.
 - o) An actual filed survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial monuments of such size and type as approve by the Planning Board and shall be referenced and shown on the Plat.
2. If the application covers only a part of the Subdivider's entire holding, a map of the entire tract, drawn to scale of not less than three hundred (300') feet to the inch showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract and the probable future drainage layout of the entire tract shall be submitted. The part of the Subdivider's holding submitted shall be considered in the light of the entire holdings.

3. A certificate issued by the owner stating: “As owner, I hereby certify that I have caused the land described on this Plat to be surveyed, divided, mapped, dedicated and access of rights reserved as represented on the Plat.” This certificate shall be executed as a conveyance is executed.
4. A certificate issued by the authorized Town and County officials to effect that there are no unpaid taxes due and payable at the time of Plat approval and no unpaid special assessments, whether or not due and payable at the time of Plat approval, on any of the lands included in the Plat, and that all outstanding taxes and special assessments have been paid on all property dedicated to public use.
5. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.

C. Plat for Major Subdivision.

1. **Application for Approval and Fee.** The Subdivider shall, within six (6) months after the approval of the Preliminary Plat, file with the Planning Board an application for approval for the Subdivision Plat in final form, using the approved application form available from the Chairman of the Planning Board. All shall be accompanied by a fee to be set by the Town Board. If the Final Plat is not submitted within six (6) months after the approval of the Preliminary Plat, the Planning Board may refuse to accept the Final Plat and may revoke approval of the Preliminary Plat and require resubmission of the Preliminary Plat.
2. **Number of Copies.** A Subdivider intending to submit a proposed Subdivision Plat for the approval of the Planning Board shall provide the Chairman of the Planning Board with a copy of the Application and ten (10) copies (one (1) copy in ink on Mylar or an acceptable equal) of the Plat, the original and one (1) true copy for all offers of cession, covenants, and agreements and two (2) prints of all construction drawings along with, if possible, one (1) digital copy on a cd with both a PDF and Tiff File containing all application materials.
3. **Plat Size.** The preferred Plat size is 11 X17. Plats larger than 11 X 17 shall be submitted on a CD, in addition to the copies described in Section 2, above.
4. **When Officially Submitted.** The time of submission of the Subdivision Plat shall be considered to be the date on which the application for approval of the Subdivision Plat, complete and accompanied by the required fee and all data required by Section 16.10, Major Subdivisions, of these regulations, has been filed with the Chairman of the Planning Board.
5. **Endorsement of State and County Agencies.** Water and sewer facility proposals contained in the Subdivision Plat shall be properly endorsed and approved by the New York State Department of Environmental Conservation and/or County Department of Health. Applications for approval of plans for sewer and water facilities will be filed by the Subdivider with all necessary Town, County, and State agencies. Endorsement and approval by the Schoharie County Department of Health shall be secured by the Subdivider before official submission of the Subdivision Plat. Approval of highway access must be obtained from appropriate State, County, or Town Transportation/Highway Department before official submission of the Subdivision Plat.
6. **Public Hearing.** Within sixty-two (62) days of the submission of a Plat in final form for approval, a public hearing shall be held by the Planning Board. This hearing shall be advertised at least once in a

newspaper of general circulation in the Town at least five (5) days before such hearing, provided however, that when the Planning Board deems the Final Plat to be in substantial agreement with the Preliminary Plat approved under Section C of this Section, and modified on accordance with requirements of such approval if such Preliminary Plat has been approved with modification, the Planning Board may waive the requirements for such public hearing. The applicant shall notify by Certified Mail, as least five (5) days in advance, the owners of the property abutting the proposed Subdivision and directly across any adjoining road and shall furnish the Planning Board with post office receipts as proof of notification. If an Agricultural Data Statement has been completed, the applicant shall mail, by Certified Mail, a copy of the Statement to the identified property owners. The Planning Board may notify other person or agencies as it deems necessary.

7. **Action on Proposed Subdivision.** The Planning Board shall by resolution conditionally approve, conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such Plat, within sixty-two (62) days from the date of the closing of the public hearing. If no public hearing is held, this action shall take place within sixty-two (62) days of the submission of the Final Plat. This time (62 days) may be extended by mutual consent of the Subdivider and the Planning Board. Failure to act on a Final Plat within the time prescribed shall be deemed approval of the Plat.

Upon resolution of conditional approval of such Final Plat, the Planning Board shall empower a duly authorized officer to sign the Plat upon completion of such requirements as may be stated in its resolution. Within five (5) days of such resolution the Plat shall be certified by Chairman of the Planning Board as conditionally approved and a copy filed in the Planning Board's files, and a certified copy mailed to the Subdivider. The copy mailed to the Subdivider shall include a certified statement of such requirements, which, when complete, will authorize the signing of the conditionally approved Final Plat. Upon completion of such requirements the Plat shall be signed by said duly authorized officer of the Planning Board. Conditional approval of the Final Plat shall expire one (1) year from the date of conditional approval.

D. Major Subdivision Plat and Accompanying Data.

The following documents shall be submitted for Plat approval:

1. The Plat to be filed with the County Clerk shall be printed upon Mylar or an acceptable equal or clearly drawn in India Ink upon tracing cloth. The size of the sheets shall be no larger than twenty-two (22") inches by thirty-five (35") inches, including a margin for binding of two (2") inches, outside the border, along the left side and a margin on one (1") inch outside of the border along the remaining sides. The Plat shall be drawn to scale of not more than one hundred (100') feet to the inch and oriented with the north point at the top of the map. When more than one (1) sheet is required, an additional index sheet of the same size shall be filed showing to scale the entire Subdivision with lot and block numbers clearly legible.

The Plat shall Show:

- a) Proposed Subdivision name and identifying title and the name of the Town and County in which the Subdivision is located, the name and address of the record owner and Subdivider, name, license number and seal of the licensed land surveyor.
- b) Street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

- c) Sufficient data acceptable to the Planning Board to determine readily the location, bearing and length of every street line, lot line, boundary lines, and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the State system of plane coordinates, and in any event, should be tied to reference points previously established by a public authority.
- d) The length and bearing of all straight lines, radii, length of curves and central angles of all curves, tangent bearings shall be given for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The Plat shall show the boundaries of the property, location, graphic scale, and true north point.
- e) The Plat shall also show by proper designation thereon all public open spaces for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the Subdivision Plat copies of agreements or other documents showing the way such areas are to be maintained and the provisions for such maintenance.
- f) All offers of cession and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Town attorney as to their legal sufficiency.
- g) Lots and blocks within the Subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing Town practice.
- h) Permanent reference monuments shall be shown and shall be constructed in accordance with the specifications of the Planning Board. When referenced to the State system of plane coordinated, they shall also conform to the requirements of the State Department of Transportation. They shall be placed as required by the Planning Board and their location noted and referenced upon the Plat.
- i) All lot corner markers shall be permanently located satisfactorily to the Planning Board, marked by an iron rod, concrete post or other suitable permanent marker.
- j) Monuments of a type approved by the Planning Board shall be set at all corners and angle points of the boundaries of the original tract to be subdivided; each lot corner and at all street intersections, angle points in street lines, points of curve and such intermediate points shall be required by the Planning Board.
- k) A map shall be submitted to the satisfaction of the Planning Board, indicating the location of monuments marking all underground utilities as actually installed. If the Subdivider completes all required improvements according to Section 16.13, Required Improvements, then said map shall be submitted prior to final approval of the Subdivision Plat.

However, if the Subdivider elects to provide a bond or certified check for all required improvements (as specified in Section 16.13, Required Improvements) such bond shall not be released until such map is submitted in form satisfactory to the Planning Board.

16.11 Conservation Subdivisions.

A. Purpose and Applicability.

The purpose of Conservation Subdivision development is to allow design flexibility, preserve important natural attributes of the land while ensuring that development occurs on the land that is best suitable for development and that environmental resources are protected.

1. For Major Subdivisions the Planning Board may require Conservation Subdivisions. For the Planning Board to make such a determination, at least one (1) of the following conditions shall be found on the parcel:
 - a) Slopes over fifteen percent (15%) on twenty-five percent (25%) or more of the area of the site;
 - b) Wetlands, including regulated and non-regulated freshwater wetlands;
 - c) Flood-prone areas as shown on New York Soil Conservation Service Soil Maps or Federal Emergency Management Agency (FEMA) maps;
 - d) Historic Structures or areas of local, state, or national importance, whether or not on a state or national register of historical structures or places;
 - e) Unique or unusual natural or geological formations;
 - f) Lakes, ponds, or other significant existing or potential recreation areas;
 - g) Rare, threatened or endangered vegetation or significant habitats of threatened or endangered wildlife as determined by the New York State Department of Environmental Conservation;
 - h) Significant scenic views or vistas as indicated in the comprehensive plan;
 - i) The significant reduction or substantial impairment of open space areas, agricultural lands, forest lands, ridge lines, or other natural features determined to be important to the Town by the Planning Board.
2. The following Conservation Subdivision process may be applied to Minor Subdivisions at the request of the applicant and the agreement of the Planning Board.

B. Review Process.

The Conservation Subdivision process involves the following steps:

1. Conservation Analysis.
2. Sketch Plan.
3. Preliminary Plat Review.
4. Final Plat Review.

C. Conservation Analysis.

1. Applicants shall prepare a Conservation Analysis, consisting of inventory maps, survey, and topographic maps, written description of the land, and a written analysis of the conservation value of various site features.
2. The Conservation Analysis shall identify site features with conservation value on the parcel. Including but not limited to the following:
 - a) Constrained acreage as defined in Section E (5), below.
 - b) Active farmland, agriculture districts, prime agricultural soils and/or soils of statewide importance for farming.
 - c) Existing proposed public trail corridors.
 - d) Scenic viewsheds as may be defined in any natural resources inventory or similar plan adopted by resolution of the Town Board.
 - e) Unique geological features.
 - f) Documented aquifers and aquifer recharge areas.
 - g) Sites identified as historic on any federal, state, or local register of historic places.
 - h) Public parks and publicly accessible recreation lands.
 - i) Unfragmented forestland.
 - j) Buffer areas necessary for screening new development and existing development and existing mining operations from adjoining parcels and from other publicly accessible areas including roads, parkland, and nature preserves.
 - k) Stone walls.
 - l) Highly erodible soil.
 - m) Trees thirty inches (30") in diameter or larger when measure 4 ½ feet above the adjacent grade, which are of sound health and provide a unique character to the site.
 - n) If requested by the Planning Board after initial submission of the Conservation Analysis, other land area exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.
3. The Conservation Analysis shall result in a composite map (i.e., overlay map based on the information collected above, and shall identify areas that are suitable for development and those lands which have conservation value and may be unsuitable for development.

D. Planning Board Action on Conservation Analysis.

1. The Planning Board shall decide which land has significant conservation value and should be protected from development by conservation easement or deed restriction. This determination shall be based upon an analysis that weighs the relative importance of the environmental resources on the site and shall be expressed in a written report supporting its decision (findings). The Planning Board may incorporate information provided by, but not limited to, its own research, site visits, consultants, other qualified experts or agencies or from public comments. If, as a result of the SEQRA review, information arises to cause the Conservation Analysis to change, such change will be made at that time, by the Planning Board, in its sole discretion.
2. The outcome of the Conservation Analysis and the Planning Board's conservation findings shall be used as the basis for Sketch Plan Review.

E. Density Calculation.

1. The density is the developable area divided by the minimum lot size as provided in the Dimensional Table.
2. The permitted density shall not be reduced as a result of the Conservation Analysis.
3. The density established shall be no greater than normally permitted under a conventional subdivision except as allowed herein.
4. The Planning Board shall first determine the developable or "unconstrained land."
5. To determine the developable land area, subtract the constrained land from the total acreage of the parcel. Constrained land includes:
 - a) Delineated wetlands (NYS Department of Environmental Conservation and US Army Corps of Engineers). For wetlands falling under the jurisdiction of NYS DEC, any upland buffer areas as defined by the NYS DEC shall also be included in constrained land calculations.
 - b) Watercourses/Waterbodies.
 - c) One-hundred-year floodplains.
 - d) Slopes over 15% which are 2,000 square feet or more of contiguous sloped area.
6. Fifteen-percent-development-loss factor, to consider loss of developable area to roadways, stormwater areas, and drainage and utility easements. The residential density shall equal the developable area divided by the permitted number of acres per unit (minimum lot size) for each Zoning District. All fractional units shall be rounded down.
7. Prior to the establishment of the overall density, the owner shall provide the Planning Board with a Preliminary Plat of the site showing how it may be subdivided in a conventional manner conforming to the requirements of this Law for that District or Districts.

8. At least forty percent (40%) of the total acreage shall be preserved by conservation easement or deed restriction and shown as such Sketch Plan, based upon the Conservation Analysis.
 - a) Applicants wishing to conserve greater than forty percent (40%) open space may receive additional density on the site, as follows:
 - i. Additional twenty percent (20%) density allowed if public access is provided to the protected open space.
 - ii. Additional ten percent (10%) density allowed for every ten percent (10%) of additional open space protected on the parcel.
9. The maximum additional density bonus shall be capped at forty percent (40%) above the density otherwise allowed.

F. Initial Sketch Plan Review.

1. At the conclusion of the Conservation Analysis process, a Sketch Plan shall be submitted.
2. The Sketch Plan shall show the following:
 - a) Preferred locations for intensive development as well as acceptable locations for less dense development.
 - b) Proposed lot locations and roads.
 - c) Land to be permanently preserved and recommended conservation uses, ownership and management guidelines for such land. The open space protected pursuant to this Section must have conservation value, which shall be determined in the course of the Conservation Analysis.
 - d) Land suitable for stormwater management facilities, which may be located within the preserved land area.

G. Preliminary and Final Plat Review.

Once the Sketch Plan is approved, the applicant must follow all processes and requirements pertaining to Preliminary and Final Plat approval for Major Subdivisions pursuant to Section 16.10, Major Subdivision, of Land.

H. Dimensional Requirements in Conservation Subdivisions.

1. The Planning Board shall determine appropriate lot sizes in the course of its review of a Conservation Subdivision based upon the criteria established in this Section and the requirement of the NYS Department of Health, Town services, and/or private water/sewage systems may be used to meet these requirements.

2. In order to permit a clustered lot configuration, wells and septic systems may be in areas of protected open space, provided that necessary easements are provided for maintenance of these facilities.
3. The applicant shall specify the dimensional requirements for a proposed Conservation Subdivision by identifying setbacks and other lot dimensions to be incorporated into the Final Plat.

I. Conservation Subdivision of Portion of Larger Tract.

The Planning Board may entertain an application to develop a portion of a parcel if a Conservation Analysis is provided for the entire parcel.

J. Conservation Subdivision Design Guidelines.

The following guidelines shall be considered and shall be required in the process of designing and siting houses in a Conservation Subdivision. When locating new houses on the land there are many options in the siting, configuration, size, and arrangement of elements in the landscape. These choices define the character of the developed landscape environment. These guidelines are examples of the preferred method to design and site uses but should not be considered the only acceptable solution.

1. **Preservation of Scenic Features.** Relate the location of structures to existing scenic features such as individual trees within open fields, stone walls, hedge rows, historic buildings, and unpaved country roads if they exist on site. Avoid locating structures in areas which would disrupt the relationship of the rural features. Locating structures in an open field is discouraged.
2. **Placement of Structures.** Wherever practical, structures shall be sited to be visually inconspicuous as possible, when seen from a distance and from lower elevations, and to minimize impact on open and agricultural lands. Wherever possible, the Planning Board may require that structures be located at the edge of the agricultural land to minimize loss of such land.
3. **Vegetation.** Existing vegetation on the site shall be preserved to the maximum extent practical. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site to maintain native vegetation as a screen for structures as seen from public roads or parks or other public views.
4. Wherever practical, buildings shall be sited so that they do not protrude above the treetops and ridgelines of hills as seen from public places and roads. This shall not be interpreted to mean that the buildings should not be seen, only that they should not protrude above the trees or hilltops.
5. Wherever practical, all electrical, telephone, television, and other communication lines, both main and service connections, servicing new developments, shall be provided by underground wiring installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.

K. Professional Assistance.

The Planning Board, subject to approval of the Town Board, may require an applicant for Conservation Subdivision to deposit in an escrow account a reasonable amount established by the Planning Board to pay fees and/or costs of any consultant, engineer, or attorney designated by the Town Board to review the application. The fees and/or costs charged by such consultant, engineer, or attorney in connection with such review will be charged against the sum deposited in escrow. If specific circumstances warrant it,

additional funds will be required to be deposited in order to cover the reasonable expense incurred beyond the original estimate. Any amount remaining shall be returned to the applicant within forty-five (45) days of Final Action on the application. Payment to the escrow account, if required, is a prerequisite to a complete application, and no review will be initiated until payment is received. The deposit specified above does not include all approvals or fees required from or by agencies other than the Town, costs associated with extensions to districts to provide necessary services to the proposal nor fees charged by Town departments or boards for permits, approvals, hearings, or other actions, except as noted above.

L. Permanent Open Space in Conservation Subdivisions.

1. Open space set aside in a Conservation Subdivision shall be permanently preserved as required by this Section. Developed lands shall not impact the conservation values of the permanent open space.
2. The open space protected pursuant to this Section must have conservation value as determined by the conservation findings.
3. Permanent Preservation.
 - a) A permanent deed restriction or a conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources, or similar conservation purposes shall be granted with the approval of the Planning Board. Such deed restriction or conservation easement shall be approved by the Planning Board and shall be required as a condition of Final Plat approval.
 - b) The permanent protection shall prohibit residential, industrial, or commercial use of open space land, including power generation facilities (except in connection with agriculture, forestry, and passive recreation), and shall not be amendable to permit such use. Access roads, driveways, wells, underground sewage disposal facilities, local utility distribution lines, stormwater management facilities, trails, temporary structures for passive outdoor recreation, and agricultural structures shall be permitted in preserved open space land with Planning Board approval, provided that they do not impair the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices.
4. Permanent Open Space may be preserved as a portion of one (1) or more large lots or may be contained in a separate open space lot.

M. Notation on Final Plat.

Preserved open space land shall be clearly delineated and labeled on the Subdivision Final Plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of lots in the Subdivision and the public to the open space land. The Final Plat shall clearly show that the open space land is permanently preserved for conservation purposes required by this Section and shall include deed recording information in the County Clerk's Office.

N. Ownership of Open Space Land.

1. Open space land shall under all circumstances be protected but may be owned in common by a homeowner's association (HOA), offered to dedication to the Town, county, state, or state governments, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.

2. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
 - a) The HOA must be established before the approved Subdivision Final Plat is signed and must comply with applicable provisions of the General Business Law and filed with the Town Clerk.
 - b) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
 - c) The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.
 - d) The HOA must be able to adjust the fees to meet the changed needs.
 - e) The applicant shall make an irrevocable, conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may only be accepted upon any one of the following circumstances.
 - i. Upon failure of the HOA to take title to the open space from the applicant or other current owner;
 - ii. Upon dissolution of the association at any future time;
 - iii. Upon failure of the HOA to fulfill its maintenance obligations hereunder; or
 - iv. Upon failure to pay its real property taxes.
3. Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
4. The Town's counsel shall find that the HOA documents presented satisfy the conditions stated above, and such other conditions as the Planning Board shall deem necessary.

O. Maintenance Standards.

1. Ongoing maintenance standards shall be established, enforceable by the Town against an owner of open space land as a condition of Subdivision approval, to ensure that the open space land is not used for any purpose or structure prohibited by the Conservation Easement or for the storage or dumping of any matter, including, but not limited to, fill, refuse, junk, or other offensive or hazardous materials.
2. If the Town Board finds that the provisions above are violated, it will begin proceedings as described in Section XIII, Administration and Enforcement, of this Law.

16.12 Filing of Approved Subdivision Plat.

A. Final Approval and Filing.

Upon completion of the requirements of Sections 16.9, Minor Subdivisions, 16.10, Major Subdivisions, and 16.11, Conservation Subdivisions above and notation to the effect upon the Subdivision Plat, it shall be deemed to have final approval and shall be properly signed by the duly designated officer of the Planning Board and shall be filed by the Applicant in the Office of the County Clerk. Any Subdivision Plat not filed or recorded within sixty-two (62) days of the date upon which such Plat is approved or considered approved by reasons of the failure of the Subdivider to act, shall become null and void.

B. Plat Void if Revised After Approval.

No changes, erasures, modifications or revisions shall be made in any Subdivision Plat after approval has been given by the Planning Board and endorsed in writing on the Plat, unless the said Plat is first resubmitted to the Planning Board and such Board approves any changes, erasures, modifications or revisions. If any such Subdivision Plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the Plat stricken from the records of the County Clerk.

16.13 Required Improvements and Agreements.

A. Improvements and Performance Bond.

Before the Planning Board grants final approval of the Subdivision Plat, the Subdivider shall follow the procedure set forth in either subparagraph below:

1. In an amount set by the Planning Board, the Subdivider shall either file with the Town Clerk a certified check to cover the full cost of the required improvements OR the Subdivider shall file with the Town Clerk a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of Section 277 of Town Law as the same not exists or may exist hereafter be amended and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution, and surety. A period of one (1) year (or such other time period as the Planning Board may determine appropriate, not to exceed three (3) years) shall be set forth in the bond within which required improvements must be completed.
2. The Subdivider shall complete all required improvements to the satisfaction of the Town Engineer, who shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Board. For any required improvements not so completed, the Subdivider shall file with the Town Clerk a bond or certified check covering all costs of such improvements and the cost of satisfactorily installing any improvement not approved by the Town Engineer. Any such bond must be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution, and surety.

B. Modification of Design Improvements.

If any time before or during construction of the required improvements it is demonstrated to the satisfaction of the Planning Board that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Planning Board may, upon approval by a majority of the members of the Planning Board, authorize modifications provided these modifications are

within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Planning Board shall issue any authorization under this Section in writing.

C. Review of Improvements.

At least five (5) days prior to commencing construction of required improvements, the Subdivider shall pay to the Town Clerk the inspection fee required by the Town Board and shall notify the Town Board in writing of the time when he/she proposes to commence construction of such improvements so that the Town Board may cause review to be made to assure that all Town specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board.

D. Proper Installation of Improvements.

If the Planning Board shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the Subdivider, they shall so report to the Town Board and Code Enforcement Officer. The Town Board then shall notify the Subdivider and, if necessary, the bonding company, and take all necessary steps to preserve the Town's rights under the bond. No Plat shall be approved by the Planning Board if the Subdivider is in default of a previously approved Plat.

E. Public Utilities.

The Planning Board may accept assurance from each public utility company whose facilities are proposed to be installed. Such assurance shall be in writing, addressed to the Planning Board, stating that such public utility company will make the installations necessary for the furnishing of its services within a specified time, in accordance with the approved Plat.

16.14 General Requirements and Design Standards.

Subdivision means the division of any parcel of land into two (2) or more lots, blocks, or sites, with or without any streets or highways and includes resubdivision. Such division shall include resubdivision of parcels of land for which an approved Plat has already been filed in the Office of the County Clerk and which is entirely or partially undeveloped.

In considering applications for Subdivision of land, the Planning Board shall be guided by the following standards. The said standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in Section 16.14 herein.

A. General.

1. **Character of Land.** Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace.
2. **Conformity to Town of Middleburgh Official Zoning Map and Comprehensive Plan.** Subdivisions shall conform to this Law, the Town of Middleburgh Official Zoning Map, and shall be in harmony with the Comprehensive Plan, if such exists.

3. **Specifications for Required Improvements.** All required improvements shall be constructed or installed to conform to the Town specifications, which may be obtained from the Planning Board.
4. **Preservation of Existing Features.** Existing features which would add value to residential development, such as scenic views from roadways and public trails, ridgelines, water resources, steep slopes, active farmland, rock outcrops, forested areas, stonewalls, hedgerows, wildlife nesting or migration areas and similar irreplaceable assets shall be preserved, insofar as possible, through harmonious design of the Subdivision.

B. Street Layout.

1. **Width, Location, and Construction.** Streets shall be of sufficient width, suitably located, and adequately constructed to conform with this Law, and to accommodate the prospective traffic and afford access for firefighting, snow removal, and other road maintenance equipment, and shall conform to the Town of Middleburgh Highway Standards and Specifications, copies of which can be obtained either by the Town Clerk or the Highway Superintendent.

The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated to compose a convenient system. When deemed necessary, the Planning Board may require easements for street right of ways (in order to insure accessibility to undeveloped lands) from both Minor and Major Subdividers.

2. **Arrangement.** The arrangement of streets in a Subdivision shall provide for the continuation of principal streets of adjoining subdivisions, and for proper projection of principal streets into adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic, and the construction or extension, presently or when later required of needed utilities and public services such as sewers, water, and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
3. **Minor Streets.** Minor streets shall be curved or otherwise designed such that their use by through traffic will be discouraged.
4. **Special Treatment Along Major Arterial Streets.** When a Subdivision abuts or contains an existing or proposed major arterial street, the Board may require service access streets, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service alley, or such other treatments as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
5. **Provision for future Resubdivision.** Where a tract of land is subdivided into lots substantially larger than the minimum size required in the Zoning District, if such exists, in which a Subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations.
6. **Dead-End Streets.** The creation of dead-end streets or loop residential streets will be encouraged wherever the Board finds that such type of development will not interfere with normal traffic circulation in the area. In the case of dead-end streets, where needed or desirable, the Board may

require the reservation of a twenty (20') foot wide easement to provide for the continuation of pedestrian traffic and utilities to the next street. Subdivisions containing twenty (20) lots or more should have at least two (2) street connections with existing public streets or streets shown on the Official Map, if such exists, or streets on an approved Subdivision Plat for which a bond has been filed.

7. **Walkways.** Within hamlet areas, curbs and pedestrian walkways shall be provided on both sides of major and minor streets.
8. **Block Size.** Blocks generally shall not be less than four hundred (400') feet nor more than one thousand two hundred (1200') feet in length. In general, no block width shall be less than twice the normal lot depth. In blocks exceeding eight hundred (800') feet in length, the Planning Board may require the reservation of a twenty (20') foot wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify at its discretion, that a four (4') foot wide paved walk be included.
9. **Intersections with Collector and Major Arterial Roads.** Minor and secondary street openings into such roads shall, in general, be at least five hundred (500) feet apart.
10. **Street Jogs.** Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall be avoided.
11. **Angle of Intersection.** In general, all streets shall join each other so that for a distance of at least one hundred (100) feet, the street is approximately at right angles to the street it joins.
12. **Relation to Topography.** The street plan of a proposed Subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged such that as many of the building sites as possible are at or above the grade of the streets.
13. **Grades.** Grades of all streets shall conform in general to terrain and to the Town of Middleburgh Highway Standards and Specifications. A combination of steep grades and sharp curves shall be avoided.

F. Street Design.

1. All streets must meet Town of Middleburgh Highway Standards and Specifications.
2. **Improvements.** Streets shall be graded and improved in accordance with Town specifications. Storm drainage facilities, water mains, sewers, street lights and signs, street trees, and fire hydrants shall be provided except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety, and general welfare. Pedestrian easements shall be improved as required by the Planning Board. Such grading and improvements shall be approved as to design and specification by the Highway Superintendent.
 - a) **Fire Hydrants.** Spacing and installations of fire hydrants shall be in conformity with all requirements of standard thread and nut as specified by the New York Fire Insurance Rating

organization and the Office of Fire Prevention and Control of the State of New York. An official from the local fire district shall review the Plat design for proper fire protection facilities.

- b) **Street Lighting Facilities.** Street lighting facilities and fixtures shall be installed after approval by the appropriate power company.
- 3. **Utilities in Streets.** The Planning Board shall, whenever possible, require that underground utilities be placed in the street right-of-way between the paved roadway and the street line to simplify location and repair of lines when they require attention. The Subdivider shall install underground service connections to the property line of each lot within the Subdivision for such required utilities before the street is paved.
- 4. **Utility Easements.** Where topography is such to make impractical the inclusion of utilities within the street right-of-way, a perpetual unobstructed easement at least twenty (20') feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present as few irregularities as possible. Such easements shall be cleared and graded where required.
- 5. **Watercourse.** When a watercourse separates a proposed street from an abutting property, provision shall be made for access to all lots by means of culverts or other structures of design approved by the Highway Superintendent.
Where a Subdivision is traversed by a watercourse, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way as required by the Town Planning Board, and in no case less than twenty (20') feet in width.
- 6. **Sidewalks, Bike Lanes, and Curbs.** Sidewalks, bike lanes, and curbs shall be provided when necessary and appropriate, as for pedestrian safety. Sidewalks and curbs shall be made of concrete unless other materials are approved at the discretion of the Planning Board.

G. Street Names.

- 1. **Type of Name.** All street names shown on the Final Plat shall be approved by the Planning Board. In general, streets shall have names and not numbers or letters.
- 2. **Names to be Substantially Different.** Proposed street names shall be substantially different so as not to be confused in sound and spelling with present names except that streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name. Generally, no street should change direction by more than ninety (90) degrees without a change in street name.

H. Lots.

- 1. **Lots to be Buildable.** The lot size, width, depth, shape and arrangement shall be such that there will be no foreseeable difficulty for reasons of topography or other natural conditions, in securing building permits to build on all lots in compliance with these Regulations, the New York State Department of Health, Town Law 280 (a), and other Town Ordinances as they may exist.

2. **Side Lines.** All side lines of lots shall be at right angles to straight street lines and radial to curved lines, unless a waiver from this rule will give a better street or lot plan.
3. **Corner Lots.** In general, corner lots should be larger than interior lots to provide for proper building setback from each street and provide a desirable building site.
4. **Driveway Access.** Driveway access and grades shall conform to the Town of Middleburgh Highway Standards and Specifications. Clear visibility shall be provided in both directions at all exit points so that the driver of a motor vehicle will have an unobstructed view of the highway from the driveway for a reasonable distance (commensurate with the speed and volume of traffic in such highway) and so that there is a similar view of the motor vehicle in the driveway.
5. **Access from Private Streets.** Access from private streets shall be deemed acceptable only if such streets are designed and improved in accordance with these Regulations.

I. Drainage Improvements.

The Planning Board may require that the Applicant make adequate provision for storm or flood water runoff channel or basins. The stormwater drainage system shall be separate and independent of any sanitary sewer system.

1. **Removal of Spring and Surface Water.** The Applicant may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either before, or as a result of, the Subdivision. Such drainage facilities shall be in the road right-of-way where feasible, or in perpetual unobstructed easements or appropriate width, and shall be constructed in accordance with the Town construction standards and specifications.
2. **Accommodation of Upstream Drainage Areas.** Drainage facilities shall be large enough to accommodate potential runoff from their entire upstream drainage area, whether inside or outside of the Subdivision, based on a fifty (50) year storm and assuming conditions of maximum potential development within the watershed. The Applicant shall be responsible for submitting such computations to the Planning Board in sufficient detail to make possible the ready determination of the adequacy of the proposed drainage installations. Concentrated drainage from lots onto the road right-of-way shall not be permitted.
3. **Effect on Downstream Drainage Area.** The Planning Board may also require a study of the effects of the Subdivision on existing downstream drainage facilities. Where it is anticipated that the additional runoff incident to the development of the Subdivision will overload an existing downstream drainage facility, the Planning Board shall notify the owner of such downstream facility and the Town Board of such potential condition and may withhold approval of the Subdivision until provision has been made for the correction of said potential condition.
4. **Wetlands.** Areas shown on DEC maps as official freshwater wetlands shall be regulated according to the provision contained in Article 24 of the NYS Environmental Conservation Law, including subsequent amendments, which is adopted herein by reference. A letter of compliance from DEC regarding wetlands, shall be required where applicable.

5. **Drainage Easements.** Where a Subdivision is traversed by a watercourse, drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the lines of such watercourse, and of such width and construction as will be adequate for the purpose as required by the Highway Superintendent, and in no case less than twenty (20') feet in width.

Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road right-of-way, perpetual unobstructed easements shall be provided for such across properties outside the road lines and with satisfactory access to the road.

A note to this effect shall be shown on the Final Plat.

J. Parks, Open Spaces, and Natural Features (can apply to all Subdivision).

1. **Recreation Areas Shown on Town Plan.** Where a proposed park, playground, or open space shown on the Town Plan is located in whole or part in a Subdivision, the Board shall require that such area or areas be shown on the Plat in accordance with the requirements specified in Paragraph B below. Such area or areas may be dedicated to the Town or County by the Subdivider if the Town Board approves such dedication.
2. **Parks and Playgrounds Not Shown on the Town Plan.** The Planning Board shall require that the Plat show sites of character, extent, and location suitable for development of a park, playground, or other recreation purpose. The Planning Board may require that the developer satisfactorily grade any such recreation areas shown on the Plat.

The Board may require up to ten percent (10%) of total subdivision land for recreation spaces. Such area or areas may be dedicated to the Town or County by the Subdivider if the Town Board approves such dedication.

3. **Information to be Submitted.** In the event that an area to be used for a park or playground is required to be shown, the Subdivider shall submit to the Board, prior to final approval, four (4) prints drawn at a scale of not less than fifty (50') feet to the inch, showing such area and the following features thereof:
 - a) Boundaries, including lengths and bearings of all straight lines; radii, lengths, central angles and tangent distances of all curves.
 - b) Existing features such as brooks, ponds, clusters of trees, rock outcrops, structures.
 - c) Existing, and if, applicable, proposed changes in grade and contours of the said area and of area immediately adjacent.
4. **Waiver of Plat Designation of Area for Parks and Playgrounds.** In cases where the Planning Board finds that due to size, topography, or location of the Subdivision, land for park, playground, or other recreation purpose cannot be properly located therein, or, if in the opinion of the Board it is not desirable, the Board may waive the requirement that the Plat show land for such purposes.

5. **Reserve Strips.** Reserve Strips of land, which might be used to control access from the proposed Subdivision to any neighboring property, or to any land within the Subdivision itself shall require Planning Board approval.
6. **Preservation of Natural Features.** The Planning Board shall, wherever possible, establish preservation of all-natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, beaches, historic sites, vistas and similar irreplaceable assets.

16.15 Public Streets, Recreation Areas.

A. Public Acceptance of Streets.

The approval by the Planning Board of a Subdivision Plat shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, or other open space shown on such Subdivision Plat.

B. Ownership and Maintenance of Recreation Areas.

When a park, playground or other recreation area shall have be shown on a Plat, the approval of said Plat shall not constitute an acceptance by the Town of such area. The Planning Board shall require the Plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town Board covering the future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.

16.16 Waivers.

- A. Where the Planning Board finds that, due to the special circumstances of a particular Plat, the provision of certain requirements is not requisite in the interest of the public health, safety, and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed Subdivision, it may waive such requirements subject to appropriate conditions, provided that such waiver will not have the effect of nullifying the intent and purpose of this Law and the Town of Middleburgh Comprehensive Plan.
- B. In granting waiver, the Planning Board shall require such conditions as will substantially secure the objectives of the standards or requirements so waived.

ARTICLE XVII DEFINITIONS

17.1 Scope and Meaning of Certain Words and Terms.

A. For this Law certain words or terms used herein shall be interpreted or defined as follows:

1. Words used in the present tense include the future tense.
2. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
3. The word “shall” is always mandatory. The word “may” is permissive.
4. A “building” or “structure” includes any part thereof. A “building” includes all other structures of every description except fences and walls regardless of dissimilarity conventional building form.
5. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
6. The word “person” includes a corporation as well as an individual.
7. The word “lot” includes the word “plot” or “parcel”.

17.2 Definitions.

Except where specifically defined or otherwise specifically provided herein, all words used in this Law shall carry their customary dictionary meanings. Unless otherwise specifically provided, for purposes of this Law the following terms and words shall have the meaning set forth below:

- **Accessory Apartment:** A dwelling unit occupying the lesser of one thousand (1,000) square feet or thirty percent (30%) of the floor space of an owner-occupied structure containing a principal use that is single-family residential or non-residential. A mobile home or single-wide manufactured home shall not be considered an accessory apartment.
- **Accessory Structure:** A structure customarily incidental and subordinate to the principal building on the same lot, where the principal building is lawful and where there is unity of ownership between the principal building and accessory structure. A structure which dominates the principal building in area is not eligible to qualify as an accessory structure.
- **Accessory Use:** A use customarily incidental and subordinate to the principal use, of the building on the same lot with such principal use or building and where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use that dominates the principal use in area, extent or purpose shall not be eligible to qualify as an accessory use. In any event, under no circumstances shall any of the following qualify as an accessory use: Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.

- **Adult Entertainment Use:** A bookstore, video store, nightclub, movie theater, retail store or other establishment which prominently features entertainment or materials with sexually explicit content. An establishment which sells such materials as an incidental part of its business or which presents such material or entertainment primarily as a form of legitimate artistic expression shall not be considered an "adult entertainment business."
- **Agricultural Data Statement:** An identification of farm operations within an agricultural district as provided in Section 305-a of the Agriculture and Markets Law.
- **Agricultural District:** An official Agricultural District recognized by the County of Schoharie and the New York State Department of Agriculture and Markets under Article 25-AA of the New York State Agriculture and Markets Law.
- **Agricultural Products:** Crops and/or livestock and livestock products (as those terms are defined at NYS Agriculture and Markets Law, Section 301).
- **Agricultural Structure:** A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, fruits or vegetables, horticultural or other products of agriculture, and used in connection with the raising, growing, or storage of agricultural products as part of a farm operation, as such term is defined in section three hundred one of the New York State Agriculture and Markets Law. An agricultural structure includes, but is not limited to, barns, sheds, poultry houses and other buildings and equipment on the premises used directly and solely for agricultural purposes. Such structure shall not be a place for human habitation.
- **Agricultural Tourism:** Activities, including the production of farm products and maple products, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting, or use of the products of the farm, and enhance the public's understanding and awareness of farming and farm life. This may include farm stays, subject to all other provisions of this Zoning Law.
- **Agricultural Use:** The use of land and structures for the production, preservation, nonindustrial processing, storage and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry or dairy products, not including agricultural industry or farms primarily for the disposal of waste products or garbage, and kennels. Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term "agricultural uses," or any variation thereof, be construed to mean, be, include, or authorize within the Town any Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.
- **Aircraft Landing Strip/Heliport** – A place where airborne vehicles land or take off, where said vehicles are stored indoors or outdoors adjacent to a landing area, and where repairs can be made to said vehicles also adjacent to a landing site. Public airports are operated by governmental agencies while private airports are operated by private individuals or businesses. Vehicles may be manned or unmanned, powered or gliders. All aircraft landing strips/helipo must comply with this law and federal and state regulations and be approved by the Commissioner of Transportation for New York State.
- **Alteration:** As applied to a building or structure, a change or rearrangement in the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving from one location or position to another.
- **Alternative Tower Structure:** Manmade trees, silos, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

- ***Animal Hospital/Veterinarian Office:*** A place where animals are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.
- ***Animated Sign:*** A sign with action or motion, rotating, flashing, or color changes, not including sign elements that are actuated by wind or forced or accelerated by air or gas, such as banners, streamers, whirligigs or other similar devices. This definition excludes Feather Banners.
- ***Apartment Complex:*** Two (2) or more Apartment Houses located on a single parcel of land. Please see Multi-Family Dwelling.
- ***Apartment House (See also Multi-Family Dwelling):*** A principal structure which is devoted to rental living units for four (4) or more families or individuals living independently of each other.
- ***Applicant:*** Any person, corporation, or other entity applying for a Building Permit, Certificate of Compliance, Certificate of Occupancy, Special Use Permit, Site Plan Approval, Sign Permit, Subdivision, Variance, or Zoning Amendment.
- ***Area, Building:*** The total area on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces, and steps.
- ***Area, Lot:*** The total area contained within the property lines of an individual parcel of land, excluding any area within an existing street right-of-way.
- ***Assembly and Fabrication:*** The manufacturing from standardized parts of a distinct object differing from the individual components.
- ***Auction Facility:*** A commercial establishment where property or items of merchandise are sold to the highest bidder.
- ***Basement:*** A story partly underground but having at least one-half (1/2) of its height above the average level of the adjoining ground. A basement shall be counted as a story for the purposes of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five (5') feet or if used for business or dwelling purposes.
- ***Bed and Breakfast Inn:*** An owner-occupied, one-family dwelling used for providing overnight accommodations and a morning meal, to not more than ten (10) transient lodgers, containing at least three (3) but not more than five (5) bedrooms for such lodgers.
- ***Below-Regulatory Concern:*** Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR Section 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.
- ***Billboard:*** A free standing sign larger than three hundred (300) square feet in gross area.
- ***Boarding or Rooming House:*** Any dwelling in which more than three (3) persons, either individually or as families are housed or lodged, except those engaged in farm work, for hire with or without meals.
- ***Brewery/Distillery/Winery/Cidery/Meadery:*** The processing, marketing, and selling of alcoholic beverages made from grains, grapes and other fruits including the processing, distillation, brewing and fermentation activity and the buildings and equipment which are needed to produce, store, distill, brew and/or ferment grains, grapes or other.
- ***Buffer:*** Vegetation, fencing, or earthen berms placed in such a manner that they make structures, objects, or parking lots not visible from a public road or adjacent properties throughout the year. Objects or structures may be "screened" by topography, vegetation, or fencing as outlined in this Law.
- ***Building:*** Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or property.
- ***Building, Height of:*** The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof, excluding

any appurtenances. When a lot fronts on two (2) or more streets of different levels, the lower street level shall be taken as the base measuring the height of the building.

- **Building Inspector/Code Enforcement Officer/Zoning Enforcement Officer:** The administrative officer or officers of the Town designated to administer and enforce the New York State Uniform Fire Prevention and Building Code, and Zoning Law which in part includes issuance of building permits and certificates of occupancy.
- **Building Permit:** Written permission issued by the Building Inspector and/or Code Enforcement Officer for the construction, repair, alteration, or addition to a structure in accordance with the Codes of New York State.
- **Building, Principal:** A building or structure in which is conducted the main or principal use of the lot on which it is located.
- **Bulk Fuel Storage:** Any facility where fuel, including but not limited to kerosene, home heating oil, gasoline, and propane is stored in tanks for distribution to wholesale establishments or individual users.
- **Campground:** Any area used for transient occupancy by camping in tents, camping trailers, travel trailers, motor homes or similar facility designed for temporary shelter, without structural additions to or removal of wheels from vehicles admitted, and a fee is paid for such use. Any area that places or stores two (2) or more such facilities shall be considered a campground and shall be subject to those zoning regulations as a campground. A recreational vehicle campground may have hook-ups for water and sewer and other amenities for campground guests including, but not limited to a swimming pool, tennis courts, and shower facilities, but not including a manufactured home park, boarding house, hotel or motel, bungalow colony, or permanent storage and use of any such accommodations. Tents, trailers, cabins, lean-to's, recreational vehicles or other similar structures used for temporarily housing workers shall not be considered a camping activity.
- **Campsite:** Any plot of ground within a campground intended for exclusive occupancy by a camping unit or units under the control of a camper for recreation, education, or vacation purposes.
- **Car Wash:** Any commercial building or premises or portions thereof used for washing, waxing, cleaning or similar treatment of automobiles as its principal function. This may include automatic or semiautomatic application of cleaner, brushes, rinse water, and heat for drying. A Gas Filling Station having a portable washing equipment shall not be deemed to be a Car Wash where such is an accessory service to the principal service of the Gas Filling Station.
- **Cellar:** A story wholly or partly below finished grade on at least three (3) sides and having more than one-half (1/2) of its height – measured from floor to ceiling – below finished grade. A cellar shall not be counted in determining the permissible number of stories.
- **Cemetery:** Property used for the interring of the dead. A cemetery includes a mausoleum, or similar structure, but does not include a crematory.
- **Center Line of Road:** A line midway between and parallel to two (2) property lines along any public highway right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of the road.
- **Certificate of Compliance:** Official certification issued by the Code Enforcement Officer that a premise conforms to the approved site plan, special use permit, and/or building permit and may be legally used or occupied.
- **Certificate of Occupancy:** Official certification issued by the Code Enforcement Officer that a building or structure conforms to the applicable provisions of this Chapter, the New York State Uniform Prevention and Building Code, and other regulations and may be legally used or occupied.
- **Change of Use:** When there is a change of use from one (1) use category to another use.

- **Changeable Copy Sign:** A sign on which it is possible to change the display copy by hand or with ordinary hand tools. This definition does not include electronic display sign.
- **Clear-Cutting:** The practice of cutting timber on an area of land five (5) acres or larger in size where the portion remaining standing is ten percent (10%) or less of the original basal area of timber on the area cleared.
- **Commercial:** Any business, industrial, or general use in which acts are done, or services or goods are provided, for compensation.
- **Commercial Events Facility:** The commercial use of a parcel for conferences, banquets, festivals, weddings, or other similar celebratory or educational activities conducted ancillary to another approved or allowed use.
- **Commercial Recreation Use:** All amusement and recreational uses and associated facilities and structures used for sports and leisure activities on a fee basis, excluding uses which are defined elsewhere in this Article (such as motor sports facility).
- **Commercial Use:** Any use including, but not limited to, retail sales, office, service (for example insurance sales, beauty parlors), professional (for example, medical and dental offices), restaurants, wholesale operations, warehousing, manufacturing, or multi-family dwellings. Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “commercial,” “commercial uses,” or any variation thereof, be construed to mean, to include, or authorize within the Town any Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.
- **Common Use Driveway:** A private deeded right-of-way which serves as the access to no more than two (2) lots or parcels of land.
- **Compatible:** A use of land or building(s) that, in terms of development intensity, building coverage, design, dimensions, occupancy, traffic generation, parking requirements, access and circulation, site improvements, and public facilities, and service demands, is consistent with and similar to neighboring uses and does not adversely affect the quality of life of persons in surrounding or nearby buildings or lands.
- **Comprehensive Plan:** The comprehensive plan adopted by the Town Board for the future development guidelines of the Town of Middleburgh pursuant to Section 272-a of the Town Law. Any document, styled comprehensive or master plan or otherwise, adopted by the Town Board for the protection, enhancement, growth and development of the Town. Immediate as well as long range, specifically pursuant to Section 272-a of the NYS Town Law, together with all other materials, written and/or graphic, including but not limited to maps, charts, slides, resolutions, reports and other descriptive material adopted by the Town Board, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the protection, enhancement, growth and development of the Town.
- **Conditional Approval:** Approval by the Planning Board of a Preliminary or Final Plat subject to such conditions as may be set forth by the Planning Board in a resolution conditionally approving such Plat. Such conditional approval does not qualify a Final Plat for recording in the Office of the County Clerk nor authorize issuance of any building permits prior to signing of the Plat by a duly authorized officer of the Planning Board.
- **Condominium:** A building or group of buildings in which dwelling units are owned individually, and the owners own the structure, common areas, and facilities jointly. See also Multi-Family Dwelling.
- **Conservation Easement:** A perpetual restriction on the use of land, stipulating that the described land will remain in a certain state and precluding future or additional development, created in accordance with the provisions of the Environmental Conservation Law of the

State of New York or Section 247 of General Municipal Law, for the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

- **Conservation Subdivisions:** A subdivision where the development of dwellings is on lots which are other than what would customarily be permitted by this Law, so that the remainder can be preserved as un-built open space.
- **Construction Trailer:** A mobile unit used for nonresidential purposes associated with on-site construction.
- **Convenience Market:** A one-story, retail store containing less than 5,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a supermarket). It may also include the sale of gasoline and /or car wash but shall not include the repair or service of vehicles.
- **Country Inn:** “See Lodging Facility.”
- **Coverage:** The lot area or percentage of lot area covered by the building or structure- including accessory buildings and structures.
- **Day-Care Facility:** Any facility which is licensed to operate pursuant to New York State Social Services Law §390 and provides care for a child on a regular basis away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child. For the purposes of this chapter, day-care facilities are defined as follows:
 - a) **Family Day-Care In-Home:** A program caring for children for more than three (3) hours per day per child in which child day care is provided in a family home, i.e., dwelling unit, under this Zoning Law, for three (3) to six (6) children. A family day-care home may, however, care for seven (7) or eight (8) children at any one time if no more than six (6) of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the Department of Social Services.
 - b) **Day-Care Center:** Any program provided for more than three (3) but less than twenty-four (24) hours a day away from the child's home by an individual association, corporation, institution or agency for seven (7) or more children except those programs operating as group family day care as defined herein and by New York State Social Services Law § 390.
 - c) **School-Age Child Care:** A program caring for more than six (6) school-aged children who are under thirteen (13) years of age or who are incapable of caring for themselves as defined in New York State Social Services Law § 390.
 - d) **Nursery School:** Any program, whether licensed with the New York State Department of Education or not, provided in one (1) or two (2) sessions, each of less than three (3) hours a day, away from a child's home, except a family day-care home, group family day-care home or day-care center.
- **Density:** The number of families, individual dwelling units, or principal structures per acre of land. It is the number of dwelling units in relation to the total land acre proposed to be used for residential purposes.
- **Design Standards:** A set of requirements and/or criteria to be met by a developer to meet various community goals as stated in the Town and Village of Middleburgh Comprehensive Plan. Design Standards include, but are not limited to, requirements for building, design, height, parking, landscaping, lighting, signage, and driveways.
- **Development:** Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as mining, dredging, filling, paving, excavations, or drilling operations.
- **Directional Signs:** A sign no larger than four (4) square feet placed as directional markers.

- **Distribution Center:** An establishment engaged in the receipt, storage, and distribution of goods, products, cargo, and materials by motor vehicle.
- **Drive-In Restaurant or Drive-Thru Facility:** Any building or lots used to pursue the sale, dispensing or serving of any retail commodity, food, refreshments or beverages in automobiles; including the establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the lot and food trucks or vehicles from which such commodities, food, etc. are sold.
- **Driveway:** A private way providing vehicular access from a public or private road to single lot, facility, or establishment.
- **Dwelling:** A building designed or used principally as the living quarters for one (1) or more families.
- **Dwelling, One Family:** A detached dwelling unit providing complete housekeeping facilities designed for year-round occupancy by one (1) family only, other than a mobile home recreational living unit or any temporary structure.
- **Dwelling, Two Family:** A detached building designed or occupied exclusively by two (2) families living independently of each other.
- **Dwelling, Three Family:** A building or portion thereof designed for year-round occupancy, containing separate dwelling units for three (3) families living independently of each other, other than a rooming house, hotel, fraternity, commune or other group quarters.
- **Dwelling, Multiple:** A building or portion thereof designed for year-round occupancy, containing separate dwelling units for four (4) or more families living independently of each other, other than a rooming house, hotel, fraternity, commune or other group quarters. This definition includes Apartment Complexes, Condominiums, Assisted Living Facilities, and Townhomes.
- **Dwelling, Seasonal:** A detached one-family dwelling unit providing complete housekeeping facilities for one (1) family designed for seasonal or non-year-round occupancy other than a mobile home, recreational living unit or any temporary structure.
- **Dwelling Unit:** A building or portion thereof providing complete housekeeping facilities for one (1) family.
- **Easement:** The right to use the land of another, obtained through the purchase or acquisition of use rights from a landowner, for a public or quasi-public purpose.
- **Electronic Display Sign:** Any Sign that contains light emitting diodes (LED's, fiber optics, light bulbs, plasma display screens or other illumination methods), which are electronically controlled and contain a fixed or changeable copy and/or a change to the intensity of light or colors displayed.
- **Energy Efficient Building:** Construction designs intended for the purpose of increasing the efficiency with which buildings and their sites use and harvest energy, water, and material; and reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance, and removal during the complete building life cycle.
- **Excavation; Excavating:** Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms "excavation," "excavating," or any variation thereof, be construed to mean, to include, or authorize within the Town any Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.
- **Extraction:** Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms "extraction" or any variation thereof, be construed to mean, to include, or authorize within the Town any Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.

- **Family:** A “family” consists of one (1) or more persons who live together in a single dwelling unit and maintain a common household. A roomer, boarder, lodger, or occupant of supervised group quarters shall not be considered a member of a “family.”
- **Farmland:** The land which contributes to the production, preparation, and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of this Article 25-AA of the Agricultural Districts Law and “timber processing” as defined in subdivision fourteen of Article 25-AA. Such farmland may consist of one (1) or more parcels of owner or rented land, which parcels may be contiguous or noncontiguous to each other.
- **Farm Market:** A location or structure where one or more farmers or vendors can sell agricultural produce to the public on a permanent basis, whether seasonal or year-round, or such a location or structure in which the area used for such activity exceeds 500 square feet, regardless of the duration or time period of such activities.
- **Farm Stand:** A temporary use of a structure including small buildings, carts, wagons, or stands for the display and sale of farm products, and not more than 500 square feet in size.
- **Farm Stay:** Any type of accommodation on a working farm which may be interactive and offer opportunities to feed animals, collect eggs, and learn how a farm functions.
- **Farm Structure/Use:** The management and use of land for the raising for compensation of agricultural products, including field crops, produce, horticultural, livestock and dairy products. The term includes the sale of products grown or raised directly on such land, and the necessary buildings and appurtenant construction such as barns, silos and fences which are a normal part of such operation. Notwithstanding any provision hereof to the contrary, for purposes if this Law in no event shall the terms “farm structure,” “farm use” or any variation thereof, be construed to mean, to include, or authorize within the Town any Land Application Facility; Natural Gas And/Or Petroleum Exploration Activities; Natural Gas And/Or Petroleum Extraction Activities; Natural Gas And/Or Petroleum Exploration, Extraction OR Production Wastes Disposal/Storage Facility; Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump; Natural Gas Compression Facility; Natural Gas Processing Facility; Underground Injection; or Underground Natural Gas Storage.
- **Farm Worker Housing:** An accessory dwelling used to house farm workers on an agricultural operation located within a certified New York State Agricultural District.
- **Feather Banner:** “Feather Banner” or “Feather Banner Sign” means a flexible pole to which one (1) side of a flexible fabric, generally in the shape of a feather or similar shape, is attached, and which is used for the primary purpose of advertising or attention-getting by the public display of visually communicative images. Such banners are also known and sold under names which include, but are not limited to, “quill sign,” “blade banner,” “flutter banner,” “bow flag,” “teardrop banners,” and others.



Feather Banner

- **Fence or Wall:** An accessory structure enclosure that will present an adequate blockade around a field, yard, or other such expanse of land.
- **Fence, Agricultural:** An accessory structure enclosure that allows visibility through the enclosure to the opposite side and is constructed for the specific intention of keeping farm animals within and wildlife out of a field, yard, or other such expanse of land. This shall not include chain-link fences.

- **Flags:** Any fabric or other flexible material attached to or designed to be flown from a flagpole or other similar device.
- **Flea Market (Swap Meet):** A commercial enterprise in a building or open area in which stalls or sale areas are set aside, rented, or otherwise provided, and intended for use by various unrelated individuals to sell articles that are either new, old, homemade, homegrown, handcrafted, obsolete, or antique and may include the selling of goods at retail by businesses or individuals who are generally engaged in retail trade. This definition does not include informal or private garage or yard sales.
- **Flood Hazard Area:** Areas subject to a 1% or greater chance of flooding in any given year as shown on the FEMA Flood Insurance Rate Map. Refer to the Town of Middleburgh Flood Damage Prevention Law.
- **Flood Plain or Flood Prone Areas:** A land area adjoining a river, stream, watercourse, ocean, bay or lake, which is likely to be flooded.
- **Floodplain Regulated:** The land area covered by the floodwaters of the base flood or the Special Flood Hazard Area (SFHA) on Flood Insurance Rate Maps (FIRM). The SFHA is the area where the Town of Middleburgh Flood Damage Prevention Law must be enforced and the area where the mandatory purchase of flood insurance for mortgages applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A. The SFHA does not include X Zones.
- **Floodway:** The channel or river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency.
- **Floor Area:** When computing the minimum residential floor area, the gross horizontal area of the principal building shall be used, not the sum of the several floors. When computing commercial or industrial floor area regarding required parking space, only sales space and working space shall be computed.
- **Foot-candle:** A measurement of the amount of light falling upon any object at any given moment (illumination), called such as it refers to the amount of light falling on a square foot area located one (1) foot away from a candle.
- **Forest Management:** Management of land using a cycle of decisions and events between planting and harvesting of trees for financial gain or personal use.
- **Forestry Use & Structure:** The harvesting of forest products such as lumber, pulp wood, firewood, maple syrup, or Christmas trees. Structure includes any building, site, or place used for cutting, milling, and/or splitting of raw timber into wood products for the purpose of sale.
- **Freestanding Sign (Pole and Non-Pole):** A self-supporting sign not attached to any building wall or fence, but in a fixed location. This does not include portable signs.
- **Frontage:** That side of a lot or building abutting on a public street or private road.
- **Fully Shielded (Full Cutoff) Luminaire:** A luminaire emitting no light above the horizontal plane.
- **Garage (Private):** A building for storage of vehicles owner by the property owner.
- **Garden Apartment:** A building or group of buildings of not more than three (3) stories in height which are constructed upon landscaped grounds.
- **Gasoline Filling Station:** An area of land, including structures thereon or any building or part thereof, that is used primarily for the sale and direct delivery to the motor vehicles of gasoline or any other motor vehicle fuel or oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing, or otherwise servicing motor vehicles, but not including auto bodywork, welding, or painting.
- **Gift Shop/Antique Shop/Craft Shop:** A relatively small retail store, typically less than 5,000 square feet of floor area, that sells miscellaneous articles appropriate as gifts including antiques, collectibles, crafts, novelties and souvenirs, but not including adult stores.
- **Glare:** Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties toward the sky.

- **Golf Course:** Land improved with tees, greens, fairways, and hazards for playing the game of golf, consisting of not fewer than nine (9) holes for play. Accessory structures and buildings may be associated with such use including a clubhouse, locker room, food stand, restaurant, banquet or conference rooms, except that overnight accommodations are not permitted.
- **Golf Driving Range:** Land arranged for the limited activity of hitting or driving golf balls within a designated area, but not designed or used for the full play of the game of golf, including accessory structures incidental to the use.
- **Golf, Miniature:** Recreational facility consisting of natural or artificial putting greens and hazards in which activity is limited to putting golf balls, and which may include accessory structures incidental to such use.
- **Good Condition:** A structure is considered in good condition if it is structurally sound, secure from the elements and from vandalism, and the exterior facade including windows, doors, steps, stoops, or porches is in sound condition.
- **Greenhouse/Nursery:** A greenhouse is a commercial building or structure whose roof and sides are made of transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for subsequent sale. A nursery is a land used for the growing, cultivation, storage, and sale of garden plants, flowers, trees, shrubs and ancillary products to the general public or for wholesale. A greenhouse used for personal enjoyment and placed on a residential lot shall be a residential accessory structure.
- **Green Space:** The area of a lot or parcel of land that shall remain undeveloped for conservation, preservation, recreation or park use.
- **Hazardous Substance:** Any substance listed as a hazardous substance in 6 NYCRR Part 597, Hazardous Substance List, or a mixture thereof.
- **Health Care Institutions:** Establishments primarily engaged in providing service for human health maintenance including hospital facilities, nursing and adult homes, personal care facilities, medical and dental clinics and offices whether publicly or privately operated. See also Low Impact Health Care Practice.
- **Heavy Industry:** A use characteristically employing some of, but not limited to the following: smokestacks, tanks, distillation or reaction columns, chemical processing or storage equipment, scrubbing towers, waste-treatment or storage lagoons, reserve pits, derricks, or rigs, whether temporary or permanent. Heavy industry has the potential for large-scale environmental pollution when equipment malfunction or human error occurs. Examples of heavy industry include, but are not limited to: chemical manufacturing, drilling of oil and gas wells, oil refineries, natural gas processing plants and compressor stations, petroleum and coal processing, coal mining, steel manufacturing. Generic examples of uses not included in the definition of “heavy industry” are such uses as: milk processing plants, dairy farms, garment factories, woodworking and cabinet shops, auto repair shops, wineries and breweries, warehouses, equipment repair and maintenance structures, office and communication buildings, helipads, parking lots, and parking garages and water wells serving otherwise allowable uses of the property. Agriculture and surface gravel and sand mining facilities shall not be considered heavy industry.
- **Historic Character or Traditional Character:** Describes the qualities and attributes of Middleburgh’s physical and visual landscape that embody the events, traditions, and personalities of its past. Historic character describes the unique architectural variety, style, and scale of our Community, including color, proportion, form, and architectural detail. However, the physical layout of the Community, its landscape patterns, the pre-automobile network of roads, and other elements also contribute to historic character.
- **Home Occupation:** An occupation or business activity resulting in a product or service for financial gain carried on in a dwelling unit or accessory structure by the resident thereof; provided that the use is limited in extent and incidental and secondary to the use of the dwelling unit for residential purposes and which does not alter the exterior of the property or affect the residential character of the neighborhood.

- a) **Minor Home Occupation:** An occupation or business activity resulting in a product or service for financial gain with no employees producing only household quantities and types of waste, requires a low number of, if any, daily client visits (and therefore no additional parking), requires no outdoor material storage, and does not involve an excessive amount of delivery truck visits. Signage if present at all is limited to a small door or lawn plaque. Site Plan Review is required for Minor Home Occupations. Includes an in-home day care operation serving six (6) or fewer children.
- b) **Major Home Occupation:** A business activity resulting in a product or service for financial gain and is conducted by an owner/operator who must reside on site. Exterior evidence of a Major Home Occupation may include one (1) or more of the following: customers and clients entering and exiting; a sign; exterior dumpsters or waste receptacles; stored equipment; or vehicles including construction equipment and delivery trucks visits or other traffic beyond that expected of a typical residence.
- **Homeowners' Association (HOA):** An individual, partnership, association, corporation, or other legal entity formed for owning, using and/or maintaining lands for the common benefit of the lot owners within a subdivision or development.
- **Hotel/Motel/Tourist Accommodation:** "See Lodging Facility."
- **Hydrology:** The science dealing with the waters of the earth, including their distribution on the surface and underground, and the cycle involving evaporation, precipitation, flow, etc.
- **Important Aesthetic Features:** Denotes elements of architecture and landscape that have been identified by the community as significant to the local quality of life and sense of place. They may be specific elements such as structures, scenic roads, parks, waterways, crossroads, and stone walls; or they may be more diffuse resources such as open spaces and scenic views. These can include historic structures and landscapes, country roads, agricultural fields and operations, views of hills and mountains, streams and wetlands, and the hamlet areas.
- **Intensive Agricultural Operation:** A Concentrated Animal Feeding Operation (CAFO) is an intensive animal feeding operation that also has more than 1,000 animal units [defined in 40 CFR 122, Appendix B]; between 301 and 1,000 animal units and that may or does discharge (to a surface water of the United States) by one of the methods covered by regulations at 40 CFR 122, Appendix B(b); or been designated a CAFO by the United States Environmental Protection Agency (USEPA) on a case-by-case basis after inspection (by USEPA) [40 CFR 122.23(c)]; and a NYS DEC Permit is required to operate a CAFO in NYS .
- **Internal and External Illumination:** Any sign lighted by electrical bulbs, fluorescent lights, or neon tubes. Neon tubes used as abstract, graphic, decorative or architectural elements shall be an illuminated sign. Internally illuminated signs are those that are lighted from within the structure itself. Externally illuminated signs are those that have artificial lights projecting upon the face of the sign.
- **Junk:** Any worn out, cast-off, discarded, or neglected article or material that has been collected or stored for salvage or conversion to another use. Junk does not include any article stored for restoration or display as part of a bona fide hobby including antique automobiles and antique farm machinery.
- a) **Junk Car:** Any motor vehicle, whether it is an automobile, bus, van or truck originally intended for travel on the public highways, which is abandoned, stored, left or placed by its owner or any other person on public or private premises, which vehicle is neither intended nor in any condition for legal use upon the public highway and is not currently registered by the State of New York or any other State for operation on public highways; or is being held or used for the purposes of resale of the vehicle or used parts therefrom; or is in such condition as to cost more to repair and place in operating condition than its reasonable market value prior to such repair. The foregoing definition shall not include an antique vehicle stored for restoration or display or both as part of a hobby.
- **Junk Yard:** A lot, land or structure or part thereof, used for the collecting, storage, or sale of waste paper, rags, scrap metals, used or salvaged building or other discarded material, or for the collecting, dismantling, storage and deposit, whether in connection with another business or not, where two (2)

or more unlicensed, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purposes of resale of used parts or materials therefrom or not. Such term shall include any place of storage or deposit for any purpose of used parts or waste materials from motor vehicles which, taken together equal in bulk two (2) or more such vehicles.

- ***Kennel, Commercial:*** Any establishment including cages, dog runs, and structures wherein more than three (3) dogs which are over six (6) months old are kept for sale, boarding, care, or breeding, for which a fee is charged.
- ***Land Application Facility:*** A site where any Natural Gas and/or Petroleum Extraction, exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.
- ***Library:*** A building in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, tapes, and other electronic media, are kept for reading, reference, and lending.
- ***Light Industry:*** Low-impact design, manufacture, assembly, treatment or packaging of products or parts predominantly from previously processed or prepared materials, including fabrication, incidental storage, and distribution of such products or parts, provided that (1) all operations are conducted entirely within an enclosed building, (2) it does not emit smoke, noise, dust odor, glare or vibration beyond the property boundaries, (3) it is compatible with the Town of Middleburgh's Comprehensive Plan, (4) it does not produce high volumes of polluting wastes; and (5) the operation does not require heavy, noisy, or otherwise objectional machinery for transporting equipment. Light industry does not include, among other things, commercial incineration of waste. If operated in conformity with the foregoing, Light Industry uses may include, but are not limited to: production of apparel and other textiles products; assembly operations; electrical and electronic machinery and equipment; food and beverage production and processing, including but not limited to such uses as a dairy processing plant, bakery, and bottling plant; mail order distribution center; metal fabrication; furniture and fixtures; printing and publishing; and commercial storage ancillary to the authorized use.
- ***Light Trespass:*** The shining of light produced by a fixture beyond the boundaries of the property on which it is located.
- ***Loading Dock:*** An off-street space or berth with a raised platform used for loading or unloading cargo, products, or materials from vehicles.
- ***Lodging Facility:*** Any hotel, motel, inn or other establishment other than a bed-and-breakfast, providing sleeping accommodations for transient guests, with or without a dining room or restaurant.
- ***Lot:*** A parcel of land separately recorded in the Schoharie County Clerk's Office, or separately depicted on the Tax Maps. Whenever two (2) or more principal buildings are located on a single lot, the area devoted to each principal building together with its accessory buildings and uses, yards and open space, shall be considered as a separate lot for the purpose of this Law.
- ***Lot, Area:*** The total area included within side and rear lot lines and the street or highway right-of-way line.
- ***Lot, Corner:*** A lot situated at the junction of and adjacent to two (2) or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.
- The total area or percentage of lot area covered by buildings, structures, and impermeable surfaces.
- ***Lot, Depth:*** A mean distance between the front and rear lot lines, measured in the general direction of the side lot lines.
- ***Lot Frontage (aka Road Frontage):*** A lot line measured along the street line.
- ***Lot Lines:*** Any line dividing one (1) lot from another or from a street.
- ***Lot Line Adjustment:*** A means by which a boundary line dividing two (2) lots is adjusted or moved. Such a move is typically made by agreement between the owners of the parcels. A change in location of the boundary line effectively creates lots with new dimensions.
- ***Lot of Record:*** Any lot which has been established as such by plat, survey record, or deed prior to the date of this Law as shown on the records in the Office of the County Clerk.

- **Lot Width:** A mean distance between side lot lines measured in the general direction of the front and rear lot lines.
- **Low Impact Health Care Practice:** An establishment of less than 2,500 square feet floor area and containing 4 or fewer patient examination or treatment rooms which is primarily engaged in providing licensed diagnosis and treatment services for human health and which may also incidentally offer for sale products associated with such diagnosis and treatment. This shall include doctor, dentist, optometrist, chiropractor, physical therapy, acupuncture, massage therapy, psychiatrist, psychologist, and other similar health care practices. This shall not include health care facilities where the use is primary retail sales, such as an eye care center or pharmacy.
- **Lumen:** A measure of light output, as rated by the manufacturer of the fixture when installed, and maintained to its intended design.
- **Luminaire (Light Fixture):** A complete lighting unit consisting of one (1) or more electric lamps, the lamp holder, any reflector or lens, ballast (if any), and any other components and accessories.
- **Manufactured Home:** These are built structures built in a factory and transported to a site. Manufactured Home include panelized homes (flat units consisting of panels and walls with windows, doors, wiring and outside siding), modular homes (multi-section units to be placed on a permanent foundation and are not transportable after installation), and pre-cut homes (factory cut to design specifications and include kit, log and dome homes). All manufactured homes are transported to the site and assembled. They differ from mobile homes in that they are not transportable after installation and do not have a permanent axle.
- **Manufactured Home Park:** A parcel of land under single ownership which has been planned and approved for the commercial renting of two (2) or more manufactured home sites.
- **Manure:** Animal feces or urine.
- **Meat Packing Facility, Small-Scale:** A facility for the slaughtering and processing of animals and the refining of their byproducts, limited to one hundred (100) animal units per week. A Small-Scale Meat Packaging Facility includes the preparation of meat products for intrastate and interstate commerce and retail sales, but does not include custom processing of animal or meat products for the owner of the animal or of the meat products, provided all meat products derived from the custom operation are returned to the owner of the animal or of the meat products.
- **Middleburgh, Town of:** All that area within the geographical boundaries of the Town of Middleburgh exclusive of that area within the incorporated Village of Middleburgh.
- **Mine:** Any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulage ways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine.
- **Mining/Resource Extraction:** The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling, or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities. In no event shall "excavation" or "mining activities" be construed to mean, be, or include Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compressor Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage.
- **Mixed Use:** A combination of residential and commercial uses in the same lot. Home occupations are not considered mixed uses according to this Law.

- **Mobile Home:** A transportable, single family dwelling intended for permanent occupancy contained in one (1) or more units designed to be joined into one (1) integral unit capable of again being separated for towing with a permanent chassis, and constructed so that it may be used with or without a permanent foundation and manufactured and stamped with a DHCR stamp. Each mobile home shall be one (1) dwelling unit for purposes of density calculations.

Mobile Home, Single-Wide: A mobile home consisting of one (1) section.

Mobile Home, Double-Wide: A mobile home consisting of two (2) sections

- **Motel:** See “Lodging Facility”.
- **Motor Sports Facility:** Any facility, track, or course upon which racing, timed events, trails, instructional driving or practice sessions are being conducted with motor vehicles, motorcycles, or other motor-powered vehicles.
- **Motor Vehicle:** Any passenger, recreation or service vehicle propelled by a fuel-using device, including but not limited to automobiles, trucks, motorcycles and motorbikes, dune buggies, snowmobiles, tractors, motor boats and all-terrain vehicles.
- **Museums, Galleries, and Performance Center:** A place for display and exhibition of cultural items and the performance of cultural activities.
- **Natural Gas:** Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.
- **Natural Gas And/Or Petroleum Exploration Activities:** Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.
- **Natural Gas And/Or Petroleum Extraction Activities:** The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.
- **Natural Gas And/Or Petroleum Exploration, Extraction or Production Wastes:** Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production or processing wastes; (c) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment, and/ or any other liquid or semi-liquid material); (d) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing, or refining of natural gas or petroleum; (e) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (f) drill cuttings from natural gas or petroleum wells; or (g) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. Section, 261.4 (b). The definition of Natural Gas And/Or Petroleum Extraction,

Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated in connection with production of agricultural products.

- **Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility:** Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.
- **Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump:** Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.
- **Natural Gas Compression Facility:** A facility constructed or operated to compress natural gas that originates from a gas well or collection of such wells, operating as a midstream facility for delivery of gas from a gas field for entry into the transmission pipeline system; the term shall not include the transmission pipeline itself; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.
- **Natural Gas Processing Facility:** Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of carbon dioxide separated from natural gas streams.
- **Night Club:** An establishment operated primarily at night for eating, drinking, and dancing.
- **Nonconforming Lot:** A lot of record that does not comply with the area, frontage, shape or locational provisions of this Law for the land use area in which it is located but was not in violation of the applicable requirements when it was created and that was lawfully created.
- **Nonconforming Structure:** A building, structure or facility, or portion thereof, which was lawfully erected or altered or maintained, but which, because of the application of this Law to it, no longer conforms to the specific regulations applicable to the zone in which it is located.
- **Nonconforming Use:** Any use of a building, other structure, or tract of land, otherwise lawfully established but which does not conform to the regulations of the District in which such use is located, either at the effective date of this law or as a result of subsequent amendments thereto.
- **Nonprofit Club or Recreation Center:** A meeting place and recreation center for a fraternal organization, which may include dining facilities, excluding adult uses and commercial restaurants and taverns.
- **Nuisance:** A use of property that produces tangible and appreciable injury to neighboring property and as further defined in the common law of the State of New York.
- **Nursery/Garden Shop:** A commercial facility which primarily includes the sale of trees, shrubs, plants and utensils incidental to gardening. This shall not be interpreted to include large-product retail sales of farm equipment and implements.
- **Office:** Buildings used for primarily conducting the administrative or professional functions of a business, profession, service, industry, or government, or like activity, including law offices, insurance services, real estate offices, financial institutions, corporate offices and similar enterprises, excluding uses which are defined elsewhere in this Chapter.

- **Official Map, Town of Middleburgh:** A map established by the Town Board under Section 270 of the New York State Town Law, showing the streets, highways, parks, drainage, and zoning districts.
- **Off-Premise Sign:** Any sign which is not on the premises of the business, including a billboard.
- **Open Space:** A portion of a lot, exclusive of required front and side yard areas, that is not covered by buildings, parking areas, streets, or other non-recreational improvements, except as may be permitted by this Law.
- **Outdoor light Fixture:** Outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot, and flood lights for buildings and structures, recreational areas, parking lots, landscape, lighting billboards and signs, street lighting, product display lighting, building overhangs and open canopies.
- **Outdoor Storage:** Land used for the keeping of goods, wares, equipment or supplies outside of a structure.
- **Outdoor Wood Furnace:** A freestanding combustion unit located outside the home or structure to be heated, consisting of a firebox surrounded by a water reservoir for heating water that is then circulated throughout the structure.
- **Overlay District:** A zone or district created for conserving natural and cultural resources or promoting certain types of development. Overlay Land Use Areas are imposed over existing land use areas and contain certain provisions that are applicable in addition to those contained in the land use law.
- **Park and Ride:** Parking that allow commuters and other people to leave their vehicles and transfer to a bus or carpool for the remainder of the journey. The vehicle is left in the parking lot and retrieved when the owner returns.
- **Parking Area:** An open area or structure, other than a street or other public way, used for the parking of automobiles and similar vehicles on a lot in connection with a separate principal use to which the parking is accessory.
- **Parking, Commercial:** An open area or structure, other than a street or public way, used for the parking of automobiles and similar vehicles made available for a fee.
- **Parking, Municipal:** An open area or structure, other than a street or public way, used for the parking of automobiles and similar vehicles.
- **Parking Shared:** Two (2) or more land uses or a multi-tenant building that merge parking needs based on different operating hours to gain higher efficiency in vehicular and pedestrian circulation, economize space, reduce impervious surfaces, and result in a superior grouping of building(s).
- **Performance or Completion Guarantee (a/k/a Performance or Maintenance Bond):** A surety bond, certified check or other security meeting the requirements of Section 277 of the Town Law, and the terms of which are satisfactory to the Town Attorney, guaranteeing the developer will install all required or planned improvements.
- **Performance Standard:** A required criteria or standard that a land use activity must conform to meet the goals and expectations in relation to protection of the health, safety, welfare and quality of life of the community.
- **Permitted Use:** A use that is allowed without land use or special use permit required. However, a Building Permit may be required.
- **Places of Worship:** A building where persons congregate to pray and conduct religious services, including religious education facilities, offices, and other accessory uses connected with such religious activities.

- ***Planned Development District:*** Plot of land which is developed as a unit with a grouping of residential, commercial buildings, together with accessory buildings and all appurtenant roadways, parking areas, loading spaces and service buildings and facilities. Such tract shall be at least ten (10) acres in area. A Planned Development District shall involve a detailed Site Plan Review and an amendment to this Zoning Law shall be required.
- ***Plot Plan:*** A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions and submitted with an application for a minor project, Special Use Permit or a Variance.
- ***Political Sign:*** A sign designed to influence the action of voters for the passage or defeat of a measure, or the election of a candidate to a public office.
- ***Portable Sign:*** A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.
- ***Potable Water Supply:*** Water supply suitable for human consumption.
- ***Preliminary Plat:*** A drawing or drawings clearly marked “Preliminary Plat” showing the layout of a proposed subdivision, submitted to the Planning Board for approval prior to submission of the plat in final form and of enough detail to apprise the Planning Board of the layout of the proposed Subdivision.
- ***Premises:*** A lot together with all the buildings and uses thereon.
- ***Prime Soils:*** Soils defined by the United States Natural Resources Conservation Service and New York State as being particularly suited and best used for agricultural purposes.
- ***Principal Structure:*** The building where the primary activities associated with the approved major land use on a parcel is intended to take place.
- ***Principal Use:*** The approved or otherwise legally established primary land use connected with a parcel.
- ***Private Educational Facility:*** A school for children or adults where instruction is provided by certified teachers or other professionals on an on-going basis, excepting camping and facilities where the primary function is other than education. These facilities are private and different than public schools.
- ***Private Road:*** A mapped street built to town standards which provides access to more than two (2) lots and is owned by an individual(s), association, or other private entity who share the use and maintain the road without help from a government agency.
- ***Prohibited Use:*** All uses which are not listed as a PERMITTED, SPECIAL USE PERMIT, or ACCESSORY USE.
- ***Projecting Sign:*** A sign which is affixed to a building, tree, or other structure and which extends more than six inches (6”) beyond the surface to which it is affixed.
- ***Public Building:*** A Town, County, State, or School District owned building or structure used for the conduct of the business of government, public education, or emergency services such as fire houses or rescue squads.
- ***Public Highway:*** An existing public way which affords principal means of access to abutting properties and is suitably improved by all appropriate official agencies
- ***Public Highway Line:*** A line, commonly referred to as the right-of-way line, which separates a street right-of-way from a lot.

- **Public Park or Playground:** A recreational facility managed by a government or nonprofit entity and open to the general public with no more than a nominal fee for services provided.
- **Public Utility; Public Utility Facility; Public Utility Structure and Essential Services:** An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility station, facility, or structure is a facility, structure, or use which is operated by a public utility and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall “Public Utility Facility,” or “Public Utility Structure,” be construed to mean, be, include, or authorize within the Town a Natural Gas Compression Facility or Natural Gas Processing Facility or Telecommunication Facilities as defined herein, and shall not include landfills, waste transfer stations or other facilities with the primary purpose of handling and disposing of household or industrial waste.
- **Radiation:** The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.
- **Radioactive Material:** Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made process. All such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.
- **Recreation:**
 - a.) **Recreation, Commercial:** Recreation facilities operated as a business and open to the public for a fee, including but not limited to athletic training facilities, fitness centers, bowling alleys, golf courses, golf driving ranges, ice skating rinks, swimming pools and picnic groves. This definition does not include Motor Sports Facility.
 - b.) **Recreation, Public:** Recreation facilities operated as a non-profit enterprise by the Town and/or any other governmental entity or any non-profit organization and open to the public.
- **Recreational Vehicle (RV)/Temporary Dwelling Units:** A portable recreation-type vehicular unit primarily designed as temporary living quarters or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- **Recreational Vehicle (RV) Campground:** A lot or lots used solely for temporary and seasonal use for Recreation Vehicles, campers, tents, and truck campers. A Recreational Vehicle Campground may have hook-ups for water and sewer and other amenities for campground guests including, but not limited to swimming pools, tennis courts, and shower facilities.
- **Research Development/Tech (R& D):** Research Development/Tech shall mean a commercial use in which research and experiments leading to the development of new products or intellectual property are conducted. This use may be conducted within the confines of an institutional, clinical, or commercial enterprise. Activities typically include: research, design, analysis and development, and/or testing of product. Uses typically include testing laboratories, acoustical chambers, wind tunnels, and computer services. Such uses do not promote odors, noise, vibration, or particulate that would adversely affect uses in the same structure or on the same site.
- **Residential Use:** A use of land and structures in which people live and sleep overnight on a regular basis.

- **Resort:** A parcel of land or commercial establishment providing lodging, recreation, meals, and entertainment primarily to vacationers, but which may also offer the same services to non-registered guests. A primary place or residence, medical or other rehabilitative facility or a single-room occupancy residential project shall not be considered a resort.
- **Restaurant:** A business enterprise engaged in preparing and serving food and beverages selected from a full menu by patrons seated at a table or counter, served by a waiter or waitress and consumed on the premises, with takeout food, if any, as an accessory use, but excluding fast food establishments and a snack bar, or refreshment stand at a public or semi-public community pool, playground or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed a restaurant.
- **Retail Establishments:** An establishment selling goods to the public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, restaurant, shoe store, stationery store and variety store; but excluding any use specifically defined elsewhere in this law.
- **Retail Establishments (Vehicle & Equipment):** The use of any building, land area or other premise for the display or sale of new and used automobiles or similar motorized vehicle equipment of operable condition. This use may or may not also include a repair and service component.
- **Ridgeline:** The narrow crest of horizontal line of hills or mountains, usually at the highest elevation.
- **Riparian Area:** A land area found along streams, rivers, and lakes where a complex assemblage of plants and other organisms live in an environment adjacent to water. Without definitive boundaries, a riparian area may include stream banks, floodplain, and wetlands, forming a transitional zone between upland and aquatic habitat. Mainly linear in shape and extent, they are characterized by laterally flowing water that rises and falls frequently. These areas are habitats or ecosystems that are dependent on the existence of perennial, intermittent, or ephemeral surface or subsurface water drainage.
- **Road:**
 - a) **Major:** Streets or highways connecting through roads with each other and handling internal movement within the Town.
 - b) **Secondary:** Streets serving to connect major roads with each other and also to handle internal movement within the Town.
 - c) **Local:** Streets which primarily function to give direct access to abutting property. Local roads are the internal part of the system to provide movement within residential or to other land use areas.
 - d) **Private:** Roads, streets, or highways whose primary function is to serve private needs on private property. Private roads for commercial purposes shall be built to Town standards. Example: Road for Mobile Home Parks, Subdivisions, Campgrounds.
- **Road, Right-of-way (R.O.W.):** The right-of-way is the total public strip of land within which there is public control and common rite of passage and within which all pavements and utility lines are located. All setbacks will be measured from the right of way or twenty-five (25') feet from centerline plus set back specified.
- **Rural Character:** Middleburgh's rural character also embodies the quality of life based upon traditional rural landscapes, activities, lifestyles, and values. Middleburgh is characterized by a balance between the natural environment and human use with low-density residential dwellings, farms, forests, outdoor recreation and other open space activities. Middleburgh's rural character can also be defined as the patterns of land use and development:

- a) In which open space and natural landscapes are preferred over built-up environments;
 - b) In which clean air and dark skies are prized and protected;
 - c) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
 - d) Which values the nature of farming and the role it plays in the community, and accepts the sounds and smells of a working farm;
 - e) That provide visual landscapes that are traditionally found in rural areas and communities;
 - f) That are compatible with the use of land by wildlife and for fish and wildlife habitat;
 - g) That generally do not require extensive municipal services; and
 - h) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.
- ***Sandwich Board Sign:*** A moveable, two-sided, sign standing on legs not over four (4') feet in total height and designed to be placed on a sidewalk or driveway.
 - ***Sales and Services of Agricultural Equipment:*** A facility designed for the sale and service of agricultural equipment.
 - ***Self-Storage Facility:*** A building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or business for self-service storage of personal property.
 - ***SEQRA:*** The New York State Environmental Quality Review Act and its requirements.
 - ***Service Establishment:*** A business or nonprofit organization that provides services, including but not limited to building, electrical, plumbing and landscape contracting, arts instruction or studio, banking, business services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing and word processing. "Service business" does not include adult uses, retail business, restaurants, warehouses or other uses separately listed in the Schedule of Uses Tables of this Law.
 - ***Service Establishment (Vehicle & Equipment):*** The use of any building, land area, or other premise for the painting, repair, or service of new and used automobiles or similar motorized vehicle equipment of operable condition, including car washes and the like, but excluding junkyards and gasoline filling stations
 - ***Shopping Center:*** A lot occupied by more than one (1) commercial use unit, attached or detached, providing small products, retail and services, large products retail and services or office and business services in excess of ten thousand (10,000) square feet gross leasable area.
 - ***Setback:*** The shortest horizontal distance in feet from the street line to the principal building on a lot.
 - ***Sign:*** Any billboard, signboard, inscription, pennant or other material, structure. Exterior painting or device composed of lettered or pictorial material that is intended for outdoor viewing by the generally public (including inside a window) and used for advertisement, announcement, or direction.
 - ***Sign, Area:*** The portion of a sign, not including the supporting structures that include lettering, designs, logos, or other graphics on the sign face. When a sign has two (2) sides, one (1) side shall count to calculate the sign area.
 - ***Sketch Plan, Subdivision:*** Sketch of a proposed subdivision showing the information specified in Article 16 of these regulations to enable the Subdivider to save time and expense in reaching general agreement with the Planning Board as to the form and layout and objectives of these regulations.
 - ***Special Use:*** A use which because of its unique characteristics requires individual consideration through a procedure of review by the Planning Board, in order to determine whether a special use permit should be granted, conditionally granted, or denied.

- **Stable, Commercial and Commercial Equine Operation:** An agricultural enterprise, consisting of seven (7) acres and stabling at least ten (10) horses, regardless of ownership, that receives ten thousand dollars (\$10,000) or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through production for sale of crops, livestock, and livestock products, or through both the provisions of such commercial equine activities and such production.
- **Stable, Private:** An accessory structure in which horses are kept for private use and not for hire, remuneration or sale.
- **Steep Slopes:** Land areas where the slope exceeds fifteen percent (15%).
- **Story:** The section of a building between the surface of a floor and the surface of a floor next above or below-whether counted for purposes of computing floor area ration. (See “Basement” and “Cellar”)
- **Stream:** The full length and width, including the bed and banks, or any watercourse, including rivers, creeks, brooks, and branches. Streams include intermittent streams that have a defined channel and evidence of sediment transport, even if such streams do not have surface water flow throughout the year or throughout the channel. For purposes of these Regulations, constructed drainage ways including water bars, swales, and roadside ditches, are not considered streams.
- **Street:** A public or private way, which affords the principal vehicular access to abutting property. Public streets are streets, roads, avenues, lanes or other traffic ways.
The following functional classification is used in these regulations:
 - a) **Street Collector:** A street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to a major street.
 - b) **Street-Dead-End or Cul-De-Sac:** A street or a portion of a street with one (1) vehicular traffic outlet.
 - c) **Street-Major:** A street which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.
 - d) **Street-Minor:** A street intended to serve primarily as an access to abutting properties. *Street Width:* The width of right-of-way, measured at right angles to the center line of the street
- **Structure:** Any combination of materials that is erected on the ground and permanently affixed thereto, and designed, intended or arranged for the housing, shelter, enclosure or structural support of person, animals, or property of any kind.
- **Subdivider:** Any person, firm, corporation, partnership, or association who or which shall lay out, for sale or development, any subdivision or part thereof, as defined herein, either for himself or others.
- **Subdivision:** The division of any parcel into two (2) or more lots, blocks, or sites, with or without streets or highways and includes re-subdivision.
- **Subdivision, Major:** Any subdivision not classified as a Minor Subdivision, including but not limited to, subdivisions of five (5) or more lots.
- **Subdivision, Minor:** Any subdivision containing not more than four (4) lots fronting on an existing street, not involving any new street or road or extension of municipal facilities and not in conflict with any provision or portion of the Comprehensive Plan, Official Map, Land Use Law, or this Zoning Law.
- **Subdivision Plat or Final Plat:** A drawing prepared by a NYS licensed engineer or land surveyor, showing a proposed subdivision containing all information and detail required by law and by these

regulations to be presented to the Planning Board for approval and which, if approved, shall be duly filed by the applicant in the office of the County Clerk or Register.

- ***Substantially Change:*** To substantially change from one use to another generally involves, but is not limited to, a change that potentially increases existing parking requirements or alters existing traffic flow, involves placement of larger outdoor waste disposal equipment, or creates new emissions. For example, although both are commercial to commercial changes, a gift shop changing to a music store would not necessarily be considered a substantial change whereas a gift shop to restaurant shall be.
- ***Substantially Commenced:*** In the context of Site Plan Review and Special Use Permits: The owner has lawfully begun construction pursuant to a validly issued building permit and installed foundations and all site plan infrastructure (e.g. roads, parking, areas, drainage and septic systems).
- ***Subsurface:*** Below the surface of the earth, or of a body of water, as the context may require.
- ***Survey:*** An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor.
- ***Surveyor:*** A person licensed as a land surveyor by the State of New York.
- ***SWPPP:*** A Stormwater Pollution Prevention Plan as defined by the State of New York.
- ***Tavern:*** A commercial eating and drinking place with a license to dispense alcoholic beverages.
- ***Telecommunications Facilities:*** Any one or combination of antennas, buildings, structures, roads, fences, etc....assembled on a site and used in conjunction with telecommunication towers including, but not limited to, personal wireless service and/or commercial mobile service networks and/or Digital Television (DTV), High Definition Television (HDTV), and Advanced Television (ATV).
- ***Telecommunications Towers:*** Any structure greater than thirty-five (35) feet in height, which can receive and/or transmitting signals (for the purpose of communications) including, but not limited to, lattice towers, guyed towers, monopoles and similar structures which may employ camouflage technology. Not including antennas and equipment for citizen band operation and amateur receiving/operation.
- ***Temporary Sign:*** A sign intended to be used for a limited period of time.
- ***Temporary Storage Unit (aka POD):*** Any container, storage unit, shed-like container, or other portable structure that can be or is used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building. An accessory building, shed, or carport/RV port complying with all building codes and land use requirements shall not be considered a temporary storage unit. Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “temporary storage unit” or any variation thereof, be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Exploration, extraction or Production Wastes/Disposal/ Storage Facility.
- ***Temporary Structure:*** A structure without any foundation or footings which is intended to be removed, when the designated time period, activity, or use for which the structure was erected has ceased.
- ***Town Engineer or Planner:*** The professionals employed by the Town of Middleburgh to provide engineering and planning services in connection with the review of applications and inspections of improvements.
- ***Townhouse:*** A group of two (2) or more attached dwelling units divided from each other by party walls, each unit having a separate entrance from the outside, and each unit being located on a separate lot. See also Multi-Family Dwelling.
- ***Trademark Architecture:*** Architecture and architectural features such as building design, scale, rooflines, colors, and windows that are associated through trademarks, and corporate designs, with specific commercial enterprises.

- **Trucking Services:** Businesses primarily engaged in the hauling of goods, together with ancillary service, parking and repair facilities for trucks used in the hauling enterprise, excluding commercial truck stops.
- **Underground Injection:** Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration, or Production Wastes, including emplacement by or into an Injection Well.
- **Underground Natural Gas Storage:** Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities.
- **Unsafe Building or Structure:** Any building or structure or portion which has any one (1) or more of the following:
 - a) Interior or exterior walls or other vertical structural members which list, lean, or buckle to such an extent that the building is in imminent danger of failure by collapse.
 - b) Improperly distributed loads upon floors or roofs or in which the same are overloaded to have insufficient strength to be reasonably safe for the purposes used.
 - c) Damage by fire, wind, or other causes to have become dangerous to life, safety, and welfare of the occupants or the people of the Town.
 - d) Parts which are precariously attached insofar as they may fall and injure members of the public or property.
 - e) A condition which makes the building a danger to the health, safety, or general welfare of the residents of the Town.
 - f) Unintended openings at the doorways or windows or walls.
 - g) Substantial debris, rubble, or parts of buildings left on the ground which is unsightly or unsafe after demolition, reconstruction, fire or another casualty.
- **Use:** The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.
- **Value-Added Products:** Goods made from harvest crops that have been processed in order to increase their worth such as jelly made from berries or cheese made from milk.
- **Variance:** An area variance or a use variance, as the context may admit.
- **Variance, Area:** The authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional requirements of the applicable zoning regulations.
- **Variance, Use:** The authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.
- **Vegetated Buffer:** An undeveloped part of a property or an entire property specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on natural features or adjacent properties. Natural vegetative covers existing within the buffer area shall be preserved as part of that buffer to the maximum extent practical. Along the Creek, a vegetated buffer is designed to conserve the areas immediately adjacent to the stream extending along both sides of a watercourse and any adjacent wetlands, floodplains or slopes.
- **Visual Impact Analysis:** A process utilized to analyze the visibility of a project, structure, building, or use from a variety of points or locations. NYS DEC publishes guidance that outline procedures for conducting such an analysis.
- **Wall Sign:** Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building, and which extends not more than six inches (6") from the surface of that building.
- **Warehouse and Storage Facility:** A facility used for the storage of goods and materials, excepting distribution and self-storage facility as defined herein.

- **Watercourse:** A discernable, definable natural course or channel along which water is conveyed ultimately to streams and/or rivers at lower elevations including intermittent streams but excepting drainage ditches, swales, or diversion terraces.
- **Wetland:** Shall mean lands or waters of the State meeting the definition of the Official Compilation of Codes, Rules and Regulations of the State of New York or any wetland meeting the United States Environmental Protection Agency and United States Army Corps. of Engineers definition of wetlands. Wetlands generally include swamps, marshes, bogs, and similar areas. In the Town of Middleburgh, wetlands mapped by the New York State Department of Environmental Conservation are set forth on official maps available at the Town Clerk's office and the regional office of the New York State Department of Environmental Conservation.
- **Wholesale Uses:** Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or other wholesalers; or acting as agents or brokers and buying merchandise for, selling, or selling merchandise to, such individuals or companies.
- **Wind Turbine (Minor):** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than ten (10) KW and intended primarily to reduce consumption of utility power at that location.
- **Yard (Required):** That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included, as part of a yard or other open space similarly required for another building on another lot.
- **Yard (Front):** An open space between the front line of the principal building and the front line of the lot and extending the full width of the lot.
- **Yard (Rear):** An open space between the rear line of the principal building and the rear line of the lot and extending the full width of the lot.
- **Yard (Side):** A yard situated between the building and the sideline of the lot and extending from the front yard (or from the front lot line, if there is no required front yard) to the rear yard (or rear lot line). The width of a side yard shall be measured from the side lot line towards the building.